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Oct 17 1881

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

No. 1099.

THE LITTLE ROCK WATER WORKS COMPANY, APPELLANT,

vs.

JOHN G. BARRET AND RICHARD B. ALEXANDER.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS.

FILED NOVEMBER 11, 1880.

Bradley

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INDEX.

	Original.	Print.
Bill	1	1
Order of record	22	7
Motion to dismiss	23	7
Exhibit A to complaint (mortgage)	24	7
Exhibit B to complaint. Bill of complaint Water Works Co. vs. Long et al	42	13
Order of record	52	16
Response of defendant	52	16
Exhibit No. 1. Ordinance No. 11	80	24
No. 2. Agreement between Water Works Co. and Long & Co.	104	32
No. 3. Receipt of Long & Co. for bonds		
No. 4. Letter of President Water Works Co. to Long & Co. June 14, 1878	116	36
No. 5. Notice—Extract from newspaper	118	37
No. 6. Letter to editor of paper	119	37
No. 7. Letter of Daniel, agent, to President Water Works Co.	122	38
No. 8. Answer to above	123	38
No. 9. Letter of Long & Co. to Water Works Co	125	39
No. 10. Letter of Water Works Co. to City Council	125	39
No. 11. Letter of Water Works Co. to Long & Co.	126	39
No. 12. Proceedings of stockholders' meeting, Nov. 12, 1878	127	40
No. 13. Letter of Urquhart to Long & Co	127	40
No. 14. Answer to above	129	41
No. 15. Letter of Urquhart to Long & Co	130	41
No. 16. Writ of attachment	131	41
Affidavit of Townsend	134	42
Affidavit of Rumbough	135	43
Order of record	137	43
Petition for removal	139	44

	Original.	Print.
Bond for removal	142	45
Order of record	143	46
Motion to remand	145	46
Amendment to bill	147	46
Do	150	47
Answer and cross-bill	155	49
Motion to file certain papers	188	58
Replication	190	58
Third amendment to bill	192	59
Supplemental bill	203	62
Replication	206	63
Deposition of W. M. Rose	214	66
Reinecke	215	66
Alexander	223	68
Brown	229	70
Barret	233	71
Exhibit A to Reinecke's deposition. Notice to trustees of default in payment, &c	242	74
Protest	243	74
Coupon	245	75
Protest	245	75
Coupon	247	75
Exhibit No. 1 to Barret's deposition. Blank note	248	76
No. 2 to Barret's deposition. Assignment	249	77
No. 3 to Barret's deposition. Asssignment	250	77
No. 4 to Barret's deposition. Agreement	251	77
No. 5 to Barret's deposition. Assignment	252	78

RECORD ENTRIES.

Filing transcript	1	1
Overruling motion to remand and amending bill	146	46
Amended bill	149	47
Appointment of receiver	152	48
Answer and cross-bill, &c	155	49
Replication	189	58
Overruling motion to produce	190	58
Third amendment to bill and judgment on demurrer	191	59
Supplemental bill	202	61
Setting cause for final hearing and replication	205	62
Final decree	206a	63
Amended final decree	207	64
Clerk's certificate	253	78

1 UNITED STATES OF AMERICA,
Eastern District of Arkansas:

Be it remembered, that at a circuit court of the United States of America, in and for the eastern district of Arkansas, begun and holden on Monday, the 28th day of October, anno Domini one thousand eight hundred and seventy-eight, at the United States court-room, in the city of Little Rock, Arkansas, the honorable Henry C. Caldwell, district judge presiding and holding said court, the following proceedings were had, to wit, on Feb'y 4, 1879:

JOHN G. BARRET AND RICHARD B. ALEXANDER
v.
LITTLE ROCK WATER WORKS CO. ET AL.

Come the plaintiffs by N. M. Rose, esq., their solicitor, and file herein the transcript of this case from the Pulaski chancery court, and also their motion to remand this cause to the State court whence it came.

Which transcript is as follows:

JOHN G. BARRET & RICHARD B. ALEXANDER
v.
LITTLE ROCK WATER WORKS COMPANY.

2 The said plaintiffs, who are citizens of the State of Kentucky, bring this suit against said Little Rock Water Works Company, which is a body corporate organized under the laws of the State of Arkansas, and Dennis Long and Samuel A. Miller, who are citizens of Kentucky, and partners doing business under the firm name of Dennis Long and Co., and for cause of action they say: That the said water works company, on the 1st day of January, 1878, by its deed of conveyance, duly executed, of that date recited that said water works company was authorized and empowered to supply the city of Little Rock and the inhabitants thereof with water for private and corporate use by means of public water works, and that, under the provisions of an ordinance of the city council of said city on November 23, 1877, said water works company had entered upon the construction of said water works, and by virtue of a resolution of the board of directors of said company on the 29th December, 1877, directing the issue, for the purpose of build-

3 ing and completing its works, of first mortgage bonds, of the denomination of one thousand dollars each, to the amount of eighty thousand dollars, said bonds to be dated January 1, 1878, and to mature twenty-five years thereafter, bearing interest at the rate of eight per centum per annum, payable semi-annually on the first days of January and July in each year at the Bank of North America, in the city of New York, on presentation of the coupons attached to said bonds, and that to secure the payment of the principal and interest of said bonds a first mortgage upon the water works of said company, together with its lands, reservoirs, machinery, pipes, properties, rights, liberties, privileges and franchises, and all the tolls, incomes, rents, issues and profits, then held or thereafter to be acquired by it, be made and executed to the plaintiffs herein as trustees, and that in addition to the payment of the interest, a sinking fund, to be in charge of a commissioner of the said fund, should be created to provide for the payment and settlement of the prin-

4 ciple of said bonds, and that, in the month of January, 1880, and annually thereafter, the said company should pay into said sinking

fund the sum of twelve hundred dollars, sufficient in addition to the interest to be paid semi-annually to pay off said issue of bonds at or before maturity; and that, in pursuance of said resolution, there had been prepared eighty coupons, numbered consecutively from one to eighty, both numbers inclusive, each of said bonds being equal and alike, save as to number, and bearing even date with said mortgage, each bond having coupons for interest attached, fifty in number, and the coupons consecutively and correspondingly numbered and matured, said bonds and coupons being in form as follows:

UNITED STATES OF AMERICA.

STATE OF ARKANSAS.

$1,000.00.] *First mortgage bond.* [No.

The Little Rock Water Works Company, a corporation duly organized and existing under the laws of the State of Arkansas, for value received, hereby promise to pay to John G. Barrett and Richard
5 B. Alexander, of the city of Louisville, Kentucky, or bearer, the sum of one thousand dollars, lawful money of the United States of America, on the 1st day of January, in the year nineteen hundred and three, together with interest on said sum from the date hereof at the rate of eight per cent. per annum, payable semi-annually on the first days of July and January in each year at the Bank of North America, in the city of New York, on presentation of the coupons attached hereto, as they severally become due.

This bond is one of a series of eighty, numbered consecutively from one to eighty, both numbers inclusive, all of like terms, date and amount, secured by first mortgage upon the water works of the said Little Rock Water Works Company in the city of Little Rock, in the State of Arkansas, together with its lands, reservoirs, machinery, pipes, properties, rights, liberties, privileges, and franchises, and all the tolls, incomes, rents, issues, and profits now held or hereafter to be acquired by
6 it, executed by it to said John G. Barrett and Richard B. Alexander, trustees, dated the first day of January, 1878, and duly acknowledged and recorded according to law in the office of the recorder, in the county of Pulaski and State of Arkansas. This bond shall not become obligatory until authenticated by the signatures of said trustees to the certificate hereto attached.

In testimony whereof the said Little Rock Water Works Company has caused this instrument to be sealed with the corporate seal and attested by the signatures of the president and secretary, and the coupons hereto attached to be signed by its secretary at Little Rock aforesaid, the 1st day of January, 1878.

THE LITTLE ROCK WATER WORKS COMPANY,
By JOHN WASSELL, *its President.*
And by G. P. C. RUNBOUGH, *its Secretary.*

We certify that this is one of the series of eighty bonds of one thousand dollars, each secured by the mortgage mentioned above.

JOHN B. BARRETT,
RICHARD B. ALEXANDER,
Trustees.

7 No. . $40.00.

The Little Rock Water Works Company will pay to the bearer forty dollars on the first day , on presentation of this coupon at the Bank of North America, in the city of New York, for semi annual interest on first mortgage bonds.

Secretary.

Wherefore said water works company did by said conveyance grant, bargain, and sell unto the plaintiffs as trustees the water works of said company, together with its lands, reservoirs, machinery, pipes, properties, rights, liberties, privileges, and franchises, and all the tolls, incomes, rents, issues, and profits then held or thereafter to be acquired by it; to have and to hold the same unto said plaintiffs, their successors and assigns forever, in trust and upon the following conditions, which are taken verbatim from said mortgage, the "party of the first part" being said water works company, and the "party of the second part" being the plaintiffs herein as described in said mortgage:

8 "So long as no default shall be made in the payment of the principal or interest thereby secured as the same shall respectively become due and the conditions of this deed be performed, the party of the first part shall retain possession and control of said property and franchises, and of the tolls, incomes, rents, issues, and profits, except as hereinafter provided. The party of the first part agrees to pay all the charges, rates, levies, or assessments, which are or may be legally imposed, assessed, or levied upon the property and franchises hereby conveyed or attempted to be conveyed, and will take care of and preserve the same, and at its own cost will do all acts necessary or proper to keep valid the lien hereby created or intended to be created, and will at any future time and as often as may be necessary execute all such other assurances, deeds, mortgages, or other instruments of writing in due form and effect as may be proper to the better carrying out of the true meaning and intent of these presents, and will especially, and at its own

9 cost, do all things that may be reasonably required to make and keep valid the lien hereby intended to be created upon after acquired property; and if the party of the first part shall well and truly pay the several installments of interest on the bonds, and each of them as it shall become due, then this instrument shall be void and of no effect.

"The party of the first part further covenants to and with the said parties of the second part, that in addition to the amount necessary to pay the semi-annual interest, and in order to provide a sinking-fund for the payment and retirement of the principal of said bonds, it will pay to Edmond Urquhart, of the city of Little Rock, as commissioner of the sinking fund, and his successors, in the month of January of each year, beginning with the month of January, 1880, the sum of twelve hundred dollars, a sum sufficient to pay off and retire the principal of said bonds at or before maturity, and that said fund shall be so used and

10 applied. Said commissioner and his successor shall use the said fund in purchasing bonds herein and hereby secured, at the then market value of said bonds, provided such purchase can be made at a rate not exceeding par and accrued interest, and the bonds thus purchased by the said commissioner shall be by him cancelled and delivered to the party of the first part, he taking a receipt for said cancelled bonds from the party of the first part. Such of the said money as the said commissioner shall not be able to use in purchasing bonds at or below

par and accrued interest shall be invested by him in a mode to be approved by the parties of the first and second parts for the purpose of earning interest for the benefit of said sinking fund.

"And as a further security for the payment of said principal and interest, and of the said installments of the sinking-fund, the party of the first part has assigned, transferred, and set over, and hereby assigns, transfers, and sets over to the parties of the second part, and
11 their successors, so much as may be necessary for the payment of the said principal and interest, and of the said installments and said sinking fund, or its claims and demands against the city of Little Rock, accrued or to accrue hereafter for the use of water and hydrants, for and during the term of twenty five years, under the ordinance of said city herein before mentioned, and under the contract thereby and thereunder made by and between the city of Little Rock and the party of the first part, and the party of the first part hereby irrevocably appoints and constitutes the commissioner of said sinking fund, and his successor, its agent to receive and receipt for all sums of money accrued or accruing from the said city of Little Rock for the use of water and hydrants for and during the said term of twenty five years.

"It is further agreed that in the event the said party of the first part shall fail for the space of ninety days to pay the semi-annual
12 interest due on said bonds as and when the same may become due, or any of the said annual installments of the sinking fund, as and when the same may become due, provided that such failure is not caused by the said city of Little Rock under the contract aforesaid, after the presentation and demand of the payment of said coupons, or after the demand of any of the installments of said sinking fund, then and in that event all of said bonds shall become due and payable, and the lien hereby created may be enforced for the whole debt, and the parties of the second part and their successors shall, on the written request of the holders of a majority of said bonds then outstanding, take possession of the property and franchises herein conveyed, or covenanted to be, and by themselves and agents, or by a receiver of a court appointed in an action for foreclosure, or an action for this special purpose, hold, use, and operate the same for the joint and equal benefit of the holders of all of said bonds, and receive the toll, rents, in-
13 comes, issues, and profits thereof; or said trustees may in such case, by the judgment or decree of a court having jurisdiction, have all mortgaged property and franchises sold and conveyed. What may be received by the trustees or receiver from tolls, incomes, rents, issues, and profits, and the proceeds of the sale, shall be applied as follows:

"1st. To the expenses incurred in and about the proceedings, the execution of this trust, the preservation and operation of said property, the reasonable compensation to the agent and attorneys of said trustees or their successors, all taxes, levies, and assessments on said property, all damages to which the parties of the second part may become liable by reason of the management of said property, and any other proper charge or expense not caused by the willful personal misconduct of the parties of the second part.

"2nd. To the payment of the outstanding bonds and interest herein
14 and hereby secured. It is also agreed that if the party of the first part shall at any time before the sale of the mortgaged property, and before the bonds herein secured are due, pay all the semi-annual interest then due on said bonds, and all installments then due on account of the sinking fund, and all expenses, taxes, compensation, and

damages, then and in that case the bonds shall not be regarded as due, and there shall be no sale of the property for past failures.

"It is further agreed that the party of the first part will indemnify and hold harmless the parties of the second part against all loss and damage which they may incur, or be subjected to, by reason of their acceptance or execution of this trust, not caused by their personal misconduct, and in the event of the declension, resignation, death, incapacity, or other disability of said trustees, or any of them, or of the said commissioner of the sinking fund, it shall and may be lawful for the chancellor of Pulaski chancery court in the State of Arkansas,
15 upon the application of the holder or holders of one quarter of said bonds then outstanding, or more, to appoint from time to time a trustee or trustees in lieu and stead of the trustees who may so decline, resign, die, or be incapacitated, or under disability, and the trustee or trustees so appointed by the chancellor shall be the second party to this mortgage, and clothed with all the rights, powers, and privileges conferred upon the parties of the second part in this mortgage; and to appoint from time to time a commissioner of said sinking fund in lieu and stead of the commissioner who may die, decline, resign, or be incapacitated, or under disability, and the commissioner so appointed by the chancellor shall be clothed with all the rights, powers, and privileges conferred upon said Urquhart by this mortgage.

"And this indenture further witnesseth, that the said parties of the second part hereby accept the said trust upon the following terms, viz: they, the said trustees, are to be liable only for gross negligence
16 or wilful misconduct, and that they may advise with and employ legal counsel, and the expenses thereof, and all their expenses in discharging their duties as trustees, shall be paid by the party of the first part, and are hereby made a charge upon the trust estate; that they shall not be required by any beneficiary to act in the execution of said trust after default, unless requested in writing by the holders of not less than a majority of the outstanding bonds hereby secured, nor unless furnished with funds sufficient to cover their reasonable expenses in beginning the proceedings, and full indemnity for current and future expenses; and they may act by agent or attorney, in all cases being responsible for gross neglect only in the selection of an agent or attorney, but the said trustees shall not be entitled to compensation for their services."

All of which will be seen by reference to a copy of said mortgage herewith filed, marked Exhibit A, and made part hereof.

17 The plaintiffs say that said Dennis Long and Co. constructed the said water-works for the supply of water to the city and inhabitants of Little Rock, and that the said works are in operation, and that said company issued seventy of its bonds, each being the denomination of $1,000, and of the form and character described in said mortgage.

That the supply of water furnished by said water-works is elevated from the level of the Arkansas River by means of steam engines, which require the sevices of one or more engineers and other competent attendants.

That the said Little Rock Water Works Company filed in the Pulaski circuit court on or about the 26th day of November, 1878, their complaint against said Dennis Long & Co., in which they alleged that said Dennis Long & Co. had violated their contract for the construction of said water works in various particulars, whereby the said com-

18 pany was damaged in the sum of one hundred thousand dollars; and said water-works company also filed an affidavit and bond for an attachment against said Dennis Long & Co. upon which an order of attachment was issued out of said court, which was levied on the property of said water-works company described in said mortgage or deed of trust; and that said property is now in the hands of the defendant, McCabe, as sheriff of said county, under and by virtue of said attachment, as will appear by copy of said complaint and other papers and proceedings in said attachment herewith filed, marked Exhibit B, and made part hereof.

That the running of said water works is essentially necessary to the convenience and protection of the inhabitants of said city, and that it is necessary that the dues accruing for the use of the water supplied by said works to said city and its inhabitants shall be collected in order to pay current expenses of the said works and to take care of its machinery and property.

19 That said Dennis Long & Co., as plaintiffs are advised, have been for some time past advancing about $150.00 per week in order to meet said expenses, as, owing to said litigation and a dispute between said city and said company about the terms and fulfillment of their mutual contract, the said works have lacked that much of paying said current expenses, and said advance was and is necessary in order to keep said works in operation; but plaintiffs are informed and believe that said Dennis Long & Co. will at once discontinue to make these advances, by reason of which said works will cease to be operated, and its machinery will be liable to injury and great depreciation in value from such non-use.

And plaintiffs say that said water works company is not doing anything and has done nothing for the preservation of said property. Plaintiffs know of no valid defence to said bonds and coupons, but say

20 that they are all in the hands of innocent holders, who acquired them for value before maturity, in due course of trade, and without any notice of any defence to any or either of them, if any such ever existed, on the part of said water works company, and that said holders are too numerous to be made parties to this suit. That none of said coupons have been paid, and that the January, 1879, coupons will soon fall due, and that said water works company is insolvent and has no means to pay the said coupons of any series, or any of the expenses of operating said works.

Plaintiffs further say that until said litigation shall have been terminated it may be necessary to borrow some money to make such repairs as may be found necessary from time to time in order to preserve said property.

Plaintiffs believe that they can only protect said property for the use of the beneficiaries in said deed of trust by having it placed in the control of a receiver.

Wherefore plaintiffs pray—

21 1. That the court may appoint a receiver to take charge of the property named in said mortgage, and to operate the same under the order of this court.

2. That the court may enjoin all of said defendants from interfering with said property in any way until a final decree shall be had herein.

3. That the court may order an account taken of the amount due at the final hearing of this cause on said bonds and coupons, and that the said water works company may be decreed to pay it into the court for the benefit of the holders of said bonds and coupons.

4. That in default of such payment the equity of redemption in said property may be foreclosed and that it may be sold to pay said sum.

5. And for all other proper relief.

N. M. ROSE,
for Plaintiffs.

STATE OF KENTUCKY,
County of Jefferson:

22 I, John G. Barrett, one of the above-named plaintiffs, say that the statements made in the foregoing complaint are true.

J. G. BARRETT.

Sworn to and subscribed before me, J. W. Scheurer, N. P., J. C. Witness my hand and seal as a notary public of said county, this 20th day of December, 1878.

[SEAL.]

J. W. SCHEURER,
N. P., J. C., Notary Public.

Filed January 7, 1879.

J. W. CALLAWAY, *Clerk.*

STATE OF ARKANSAS,
County of Pulaski:

Be it remembered that at a term of the Pulaski chancery court, begun and held at Little Rock the seat of government of the Seat of Arkansas, on the third Monday in September, A. D. 1878, present, the Hon. D. W. Carroll, chancellor, presiding, among others the following proceedings were had in said court, on the 9th day of January, 1879, a day of said term, to wit:

23 JOHN G. BARRETT ET AL.
vs.
LITTLE ROCK WATER WORKS COMPANY et als. } 1031.

Came the defendant, the Little Rock Water Works Company, by John McClure, their solicitor, and by leave of the court file herein their motion to dismiss this cause for want of bond for costs. Came also the plaintiffs, by N. M. Rose, their solicitor, and by leave of the court file herein Exhibits A and B to the complaint heretofore filed herein.

Now comes the Little Rock Water Works Company, one of the defendants herein, by its attorneys, E. W. Kimball, John McClure, and Henderson & Caruth, and moves the court to dismiss this action, and for cause states that the plaintiffs are non-residents of the State of Arkansas; that the fact of non-residence appears on the face of said complaint; that no bond for costs has been filed in this cause, as is required by the statutes in such cases made and provided.

24 E. W. KIMBALL,
JOHN McCLURE, AND
HENDERSON AND CARUTH,
For Water Works Company.

Filed in open court January 9, 1879.

J. W. CALLAWAY, *Clerk,*
By W. T. EAKIN, *D. C.*

Exhibit A to complaint.

This indenture of a mortgage made and entered into by and between the Little Rock Water Works Company, a corporation duly organized and existing under the laws of the State of Arkansas, of the first part,

and John Barrett and Richard B. Alexander, of the city of Louisville, Kentucky, trustees, of the second part, witnesseth:

That whereas the party of the first part is authorized and empowered under the laws of the State of Arkansas, and under the provisions of an act of the general assembly of the State of Arkansas approved April 12th, 1869, entitled "An act to provide for the creation and
25 regulation of incorporate companies," to supply the city of Little Rock and the inhabitants thereof with water for private and corporate use by means of public water works; and whereas under the provisions of an ordinance of the city counsel of the city of Little Rock, passed Nov. 23, 1877, entitled "An ordinance in relation to water works and granting certain rights and privileges to the company known as the Little Rock Water Works Company," and under a proclamation of the mayor of the city of Little Rock, of date December 1, 1877, issued in pursuance of said ordinance, the party of the first part has entered upon the construction of said water works, and the directors of said company, at a meeting held the 29th day of December, 1877, adopted the following resolutions:

"Resolved by the board of directors of the Little Rock Water Works Company, That the Little Rock Water Works Company, for the purpose of building and completing its works, make and issue its first mortgage bonds of the denomination of one thousand dollars each to
26 the amount of eighty thousand dollars; said bonds to be dated the first day of January, 1878, and to mature twenty-five years thereafter, bearing interest at the rate of eight per cent. per annum, payable semi-annually on the first days of July and January in each year, at the Bank of America, in the city of New York, in lawful money of the United States, on presentation of the coupons attached to said bonds.

"And further resolved, That to secure the payment of the principal and interest of said bonds, a first mortgage upon the water works of the Little Rock Water Works Company, together with its lands, reservoirs, machinery, pipes, properties, rights, liberties, privileges, and franchises, and all the tolls, incomes, rents, issues, and profits, now held or hereafter to be accrued by it, is hereby directed to be made and executed to John G. Barrett and Richard B. Alexander, of the city of Louisville, Kentucky, as trustees.

"And further resolved, That in addition to the payment of
27 the interest, a sinking fund, to be in charge of a commissioner of the said sinking fund, shall be created and established to provide for the payment and settlement of the principal of said bonds; and in the month of January, 1880, and annually thereafter, the Little Rock Water Works Company shall pay into said sinking fund the sum of twelve hundred dollars, sufficient in addition to the interest to be paid semi-annually to pay off and retire said issue of bonds at or before maturity."

And in pursuance of said resolution there have been prepared and made ready for issue eighty coupon bonds, numbered consecutively from from one to eighty, both numbers inclusive, each of said bonds save as to numbers being equal and alike and bearing even date herewith, each bond having coupons for interest attached, fifty in number, and the coupons consecutively and correspondingly numbered and matured, which bonds and coupons are in form as follows:

(See page four for copy of bond and page seven for copy of coupon.)

28 Now, therefore, to secure the payment of said bonds and coupons,

and for the sum of one dollar cash in hand paid to the party of the first part by the parties of the second part before the sealing and delivering hereof, the receipt whereof is hereby acknowledged, the party of the first part has granted, bargained, and sold, and does hereby grant, bargain, and sell, transfer and set over to the parties of the second part as trustees, the water works of the parties of the first part, together with the lands, reservoirs, machinery, pipes, properties, rights, liberties, privileges, and franchises, and all the tolls, incomes, rents, issues, and profits now held or hereafter to be acquired by it. To have and to hold the same unto the parties of the second part, their successors and assigns, forever in trust and upon the following conditions, to wit:

So long as no default shall be made in the payment of the principal or interest hereby secured as the same shall respectively become
29 due and the conditions of the deed be performed, the party of the first part shall retain possession and control of said property and franchises and of the tolls, incomes, rents, issues, and profits, except as hereinafter provided. The party of the first part agrees to pay all charges, rates, levies or assessments which are or may be legally imposed, assessed or levied upon the property and franchises hereby conveyed or attempted to be conveyed, and will take care of and preserve the same, and at its own cost will do all acts necessary or proper to keep valid the lien hereby created or intended to be created, and will at any future time and as often as may be necessary, execute all such other assurances, deeds, mortgages or other instruments of writing in due form and effect as may be proper to the better carrying out of the true meaning and intent of these presents, and will especially, and at its own cost, do all things that may be reasonably required to make and keep valid the lien hereby to be created upon after acquired property; and
30 if the party of the first part shall well and truly pay the several installments of interest in the said bonds and each of them as it shall become due, then this instrument shall be void and of no effect.

The party of the first part further covenants to and with the said parties of the second part, that in addition to the amount necessary to pay the semi-annual interest, and in order to provide a sinking fund for the payment and retirement of the principal of said bonds, it will pay to Edmond Urquhart, of the city of Little Rock, as commissioner of the sinking fund, and his successors, in the month of January of each year, beginning with the month of January, 1880, the sum of twelve hundred dollars, a sum sufficient to pay off and retire the principal of said bonds at or before maturity, and that said fund shall be so used and applied.

Said commissioner and his successor shall use the said fund in purchasing bonds herein and hereby secured at the then market value
31 of said bonds, provided such purchase can be made at a rate not exceeding par and accrued interest, and the bonds thus purchased by the said commissioner shall be by him cancelled and delivered to the party of the first part, he taking a receipt for said cancelled bonds from the party of the first part. Such of said money as the said commissioner shall not be able to use in purchasing bonds at or below par and accrued interest shall be invested by him in a mode to be approved by the parties of the first and second part for the purpose of earning interest for the benefit of said sinking fund. And as a further security for the payment of said principal and interest and of the said installments of the said sinking fund, the part' of the first part has assigned, transferred, and set over, and hereby assigns, transfers, and sets over to the parties of the *parties of the* second part and their successors so much as may be necessary for the payment of the said prin-

cipal and interest and of the said installment and of said
32 sinking fund and of its claims and demands against the city of Little Rock accrued or to accrue hereafter, for the use of water and hydrants for and during the term of twenty-five years, under the ordinance of said city hereinbefore mentioned, and under the contract thereby and thereunder made by and between the city of Little Rock and the party of the first part; and the party of the first part hereby irrevocably appoints and constitutes the commissioner of said sinking fund and his successor its agent to receive and receipt for all sums of money accrued or accruing from the said city of Little Rock for the use of water and hydrants for and during the said term of twenty-five years.

It is further agreed, that in the event the said party of the first part shall fail for the space of ninety days to pay the semi-annual interest due on said bonds as and when the same may become due, or any of the said annual installments of the said sinking fund as and when the same may become due, provided that such failure is not caused by the
33 city of Little Rock, under the contract aforesaid, after presentation and demand of the payment of said coupons, or after the demand of any of the installments of the said sinking fund, then and in that event all of said bonds shall become due and payable, and the lien hereby created may be enforced for the whole debt, and the parties of the second part and their successors shall, on the written request of the holders of a majority of said bonds then outstanding, take possession of the property and franchises herein conveyed or covenanted so to be, and by themselves and agents, or by a receiver of a court appointed in action for foreclosure, or in action for this special purpose, hold, use, and operate the same for the joint and equal benefit of the holders of all of said bonds, and receive the toll, rents, issues, incomes, and profits thereof, or said trustees may in such cases, by the judgment or decree of a court having jurisdiction, have all mortgaged property and
34 franchises sold and conveyed. What may be received by the trustees or receiver from tolls, incomes, rents, issues, and profits, and the proceeds of the sale, shall be applied as follows:

1st. To the expenses incurred in and about the proceedings, the execution of the trust, the preservation and operation of said property, the reasonable compensation to the agent and attorneys of said trustees or their successors, all taxes, levies, and assessments on said property, all damages to which the parties of the second part may become liable by reason of the management of said property, and any other proper charge or expense not caused by the wilful personal misconduct of the parties of the second part.

2nd. To the payment of the outstanding bonds and interest herein and hereby secured.

It is also agreed that if the party of the first part shall at any time before a sale of the mortgaged property, and before the bonds herein secured are due, pay all the semi annual interest then due on said
35 bonds, and all installments then due on account of the sinking fund, and all expenses, taxes, compensation, and damages, then and in that case the bonds shall not be regarded as due, and there shall be no sale of the property for part failures.

It is further agreed that the party of the first part will indemnify and hold harmless the parties of the second part against all loss and damage which they may incur or be subjected to by reason of their acceptance or extension of this trust not caused by their personal misconduct, and in the event of the declension or resignation, death, incapacity, or other

disability of the said trustees, or any of them, or of the said commissioner of the sinking fund, it shall and may be lawful for the chancellor of the Pulaski chancery court, in the State of Arkansas, upon the application of the holder or holders of one-quarter of said bonds then outstanding or more, to appoint from time to time a trustee or trustees in lieu and stead of the trustees who may so decline, resign, die, or be incapacitated or under disability, and the trustee or trustees so ap-
36 pointed by the chancellor shall be the second party to this mortgage and clothed with all the rights, powers, and privileges conferred upon parties of the second part in this mortgage, and to appoint from time to time a commissioner of the said sinking fund in lieu and stead of the commissioner who may so decline, resign, die, or be incapacitated or under disability; and the commissioner so appointed by the chancellor shall be clothed with all the rights, powers, and privileges conferred upon the said Urquhart by this mortgage.

And this indenture further witnesseth that the said parties of the second part hereby accept the said trust upon the following terms, viz: They, the said trustees, are to be liable only for gross negligence or wilful misconduct; that they may advise with and employ legal counsel and the expenses thereof and all their expenses in discharging their duties as trustees shall be paid by the party of the first part, and hereby made a charge upon the trust estate; that they shall not be required by any beneficiary to act in the execution of said trust after de-
37 fault unless requested in writing by the holders of not less than a majority of the outstanding bonds hereby secured, nor unless furnished with funds sufficient to cover their reasonable expenses in beginning the proceedings and full indemnity for current and future expenses, and they may act by agent or attorney in all cases, in all cases being responsible for gross neglect only in the selection of an agent or attorney, but the said trustees shall not be entitled to compensation for their services.

In witness whereof the Little Rock Water Works Company, party of the first part, has this first day of January, 1878, (eighteen hundred and seventy-eight,) sealed this mortgage with its corporate seal, and caused the same to be signed by its president, and to be attested by its secretary, for and on behalf of the party of the first part, and John G. Barrett and Richard B. Alexander, parties of the second part, have subscribed their names hereto to attest their acceptance of the foregoing trust.

LITTLE ROCK WATER WORKS COMPANY,
[L. S.] By JOHN WASSELL,
Its President.

38 Attest:
GEO. P. C. RUMBOUGH, *Sec't'y.*

We hereby accept the trust conferred upon us in the foregoing mortgage.
January 1st, 1878.

J. G. BARRET,
R. B. ALEXANDER,
Trustees.
E. URQUHART,
Com'r Sinking Fund.

STATE OF ARKANSAS,
County of Pulaski:

On this day came before , a notary public for said county, John Wassell and Geo. P. C. Rumbough, to me well known as the persons executing the foregoing deed, and the said Wassell being by me duly sworn, made oath that he is president of the Little Rock Water Works Company, and that the seal of said company; and that the same was duly attached to said deed by his direction and in his presence this day, and said Rumbough, being duly sworn, made oath that he is the secretary of said company, and that said seal is the genuine seal
39 of said company, and that the same was duly attached to said deed in his presence this day, and said Wassell and Rumbough acknowledged that they had respectively executed said deed in their official capacity as such president and secretary, for the consideration and purposes therein mentioned and set forth.

JOHN WASSELL,
President Little Rock Water Works Company.
GEO. P. C. RUMBOUGH,
Secretary Little Rock Water Works Company.

Sworn to and subscribed before me. Witness my hand and official seal, at the city of Little Rock, this 1st day of January, 1878.

[L. S.] J. G. BOTSFORD,
Notary Public.

STATE OF ARKANSAS,
County of Pulaski:

On this day came before me, a notary public of said county, Edmund Urquhart, to me well known as the person signing the acceptance of the foregoing deed, and stated that he had executed said acceptance for the consideration and purposes therein mentioned and set forth.

Witness my hand and seal of office at the city of , on
40 the first day of January, 1878.

[L. S.] J. G. BOTSFORD,
Notary Public.

STATE OF KENTUCKY,
County of Jefferson:

Be it remembered, that on this day came before the undersigned, Wm. Reinecke, a notary public within and for the county aforesaid, duly commissioned and acting, John G. Barrett and Richard B. Alexander, to me well known as the persons signing the acceptance of the foregoing deed, and stated that they had executed the said acceptance for the consideration and purposes therein mentioned and set forth.

Witness my hand and seal as such notary public on this 4th day of January, 1878.

[L. S.] WM. REINECKE,
Notary Public.

Certificate of record.

STATE OF ARKANSAS,
County of Pulaski, ss:

41 I, Thomas W. Newton, clerk of the circuit court and ex officio recorder for the county aforesaid, do hereby certify that the annexed and foregoing instrument of writing was filed for record in my office on the 9th day of January, A. D. 1878, at 3 o'clock p. m., and the

same is now duly recorded, with the acknowledgment and certificate thereon, in record book, vol. A C, on page 383.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, this 14th day of January, A. D. 1878.

THO'S W. NEWTON, *Clerk.*

In testimony that the foregoing 19 pages contain a true copy of the mortgage therein recited, as the same appears on record, I, Thomas W. Newton, clerk, hereto set my hand and official seal this 12th day of December, 1878.

SEAL

THO'S. W. NEWTON, *Clerk,*
By W. W. FIELD, *D. C.*

Filed in open court, Jan'y 9th, 1879.

J. W. CALLAWAY, *Clerk,*
By W. S. EAKIN, *D. C.*

42 *Exhibit B to complaint.*

LITTLE ROCK WATER WORKS COMPANY
vs.
DENNIS LONG AND SAMUEL A. MILLER, Partners, under the firm name and style of Dennis Long et al.

The plaintiff complains of the defendants, and say that they, the plaintiffs, are a corporation duly established by the laws of the State of Arkansas, and doing business at Little Rock, Pulaski County, in said State; that the defendants are contractors and copartners doing business under the name of Dennis Long & Co., and they are all non-residents of the State of Arkansas, and residents of the State of Kentucky; that the plaintiffs, by virtue of a certain ordinance enacted by said city of Little Rock, upon the 23rd day of November, 1877, had granted to them and now possesses the exclusive right to lay water mains and pipes in and under all the streets, alleys, and public places in said city, and to erect and maintain water works therein,
43 for the purpose of supplying said city and the inhabitants thereof with pure, wholesome, and filtered water, for public and domestic purposes, for the term of twenty-five years from the first day of December, 1877, which ordinance was duly accepted by said plaintiff, and became and now is a contract between them and said city, and now is in full force and unrepealed; a copy of which ordinance is No. 11, is hereto attached and made part of this complaint, and of all counts in this complaint contained.

And the plaintiffs further say, that in pursuance of their charter of incorporation and of said ordinance, upon the 24th day of November, 1877, they made and entered into a written agreement with the said defendants to pay them the sum of one hundred thousand dollars, at the terms for the purpose and upon the considerations therein set forth, and that in consideration of said payment to be made said defendants then in said written agreement contracted and bound themselves to build, equip, and to put into successful operation in said city,
44 water works as aforesaid, and to complete and finish the same on or before the first day of October, 1878; that by the express provisions of said agreement said ordinance No. 11, so far as related to the construction of said water works, was made a party of said contract, and in other respect in said agreement named was incorporated in and

became a party of the same, which agreement and a subsequent stipulation as to the time of payment by said company for the constructing said works is hereto attached and made a part hereof, and numbered Exhibit B, and the plaintiffs aver that they have in all things, and at all times, done and offered to do all things by them required to be done by said contract and ordinance according to their true intent and meaning; that they have paid and offered to pay all sums of money to be by them paid, and they have delivered and offered to deliver all bonds, notes, mortgages, and all other things whatsoever to be by them delivered under said contracts and ordinances, and they aver that they have already paid in cash on said contract to said defendants the sum
45 of fifteen thousand dollars, and have delivered to them seventy-five mortgage bonds as in said contract required, and each of the value and sum of one thousand dollars, and bearing eight per cent. interest per annum, and they have put into the hands of said city the sum of $2,500.00 as an earnest and profert, as in said ordinance required. But they say that said defendants have wholly and utterly neglected and refused to execute, do, and perform their part of said contract, to the great damage and injury of these plaintiffs.

And the plaintiffs aver that the defendants have violated their said contract in the following particulars:

1st. They have not finished nor completed said water works, nor put the same in successful operation on or before October 1st, 1878, nor at any other time, nor have they put them in operation at all.

2nd. They have not completed said water works to the satisfaction and acceptance of the city counsel of said city of Little Rock.

3rd. They have not provided any machinery, apparatus, or
46 means to filter the water to be used for domestic purposes.

4th. They have not made a proper standpipe and the one they have pretended to furnish leaks badly, has no cover upon the same, and is unfit for use.

5th. They have not laid the pipes 30 inches under the ground and grade of streets, but have left the same lying upon the surface of the earth, and in places wholly unprotected or covered in any manner.

6th. They have left the valves of the main suction pipes out of water, so that a sufficient supply cannot be had.

7th. The main pipes put down in the streets of the city are badly laid with poor and worthless joints of inferior material and not strong enough to bear the test provided by said contract.

8th. They have not erected a pump-house as in said contract required.

9th. They have not built a well as agreed, but have left the
47 same unprotected, unsafe, and liable at any time to be destroyed by the drift of the river.

10th. They have not put in 43 stop valves as required, nor pointed out or indicated the location of any such valves.

11th. They have used inferior iron for their pipes, which are weak and unsound.

12th. They have not tried or tested the said works in any manner whatever, and they refuse to do so.

13th. They have not made a well in which the water does not rise and fall with the rise and fall of the Arkansas River, but the water in the well made does rise and fall with the rise and fall of said river.

1st. And the plaintiffs say that by reason of the failure of said defendants to perform their said contract they have been put to great expense and obliged to lay out large sums of money as follows:

For office rent	$235 00
" services of employees	4,000 00
" interest on money advanced to defendants	1,3 5 00
" printing	327 00

48 In all the sum of $5,937.00, which sum they claim as damages suffered by them on account of the violation of said contract by the defendants.

2nd. And they further aver that in accordance with said ordinance they deposited the sum of $2,500.00 as an earnest and profert to said city for the faithful performance on their part of the terms of said ordinance No. 11; that they wholly relied on said defendants to complete said water-works in said ordinance named and in said contract agreed by them to be executed, and the defendants have wholly refused and neglected to do of perform their agreements aforesaid.

3rd. And they further say that if said defendants had performed their part of said contract at the time named therein, which they have wholly failed to do, the plaintiffs would have been entitled to and would have received large means and profits from supplying said city with water, viz, the sum of $4,563.00, and also large income and profit from

49 the business of furnishing the inhabitants thereof with water for domestic and other purposes, viz, the sum of $2,000.00, and that by means of the failure of said defendants to perform their part of said contract they have lost the said revenue, income, and profit, and now claim in this behalf damages from the said defendants in the sum of $6,563.00.

4th. And they further say that by reason of the provisions and agreement aforesaid made by said defendants to them, and which the defendants have wholly failed to perform, they have been induced to advance to the said defendants, and prior to the 1st day of October, 1878, did advance to them the sum of fifteen thousand dollars in money, for which they have received no consideration whatever, and which sum the defendants now have and hold without right, and which though requested they refused to pay back to the said plaintiffs, but which sum with interest from the time of payment is now due from the defendants to the plaintiffs.

50 5th. And they further say that relying upon the promises and agreements of the defendants made as aforesaid, they executed and delivered to them seventy bonds duly secured by mortgage, as in contract B is set forth, and each for $1,000, and each at the value of $1,000 and interest at 8 per cent. per annum from January 1, 1878, which bonds and the coupons thereto attached the defendants wrongfully have and hold, and though requested to return to the plaintiffs, but have converted the same to their own use, and whereby the plaintiffs waiving the tort are entitled to have and receive of the defendants the value of said bonds, viz, the sum of seventy thousand dollars and interest from said first day of January, 1878.

Wherefore they demand judgment against said defendants for the sum of one hundred thousand dollars and for their costs and all other proper relief.

JOHN McCLURE,
HENDERSON & CARUTH, AND
EBEN W. KIMBALL,
Pltf's Att'ys.

51 Geo. P. C. Rumbough, secretary of Little Rock Water Works Company, being duly sworn in behalf of said plaintiffs, says that the matters and things set forth in the above complaint are true as he verily believes.

GEO. P. C. RUMBOUGH.

Subscribed and sworn to before me this 26th day of Nov., 1878.
THOS. W. NEWTON, *Clerk.*

STATE OF ARKANSAS,
County of Pulaski:

I, Thomas W. Newton, clerk of the circuit court for the county and State aforesaid, hereby certify that foregoing 10 pages contain a true copy of the original complaint therein recited as the same appears on file in my office.

Witness my hand and official seal this 26th Nov., 1878.
THOS. W. NEWTON, *Clrk,*
By W. W. FIELD, *D. C.*

(Endorsed:) Filed and writ of summons and attachment issued Nov. 26, 1878.

Filed in open court Jan'y 9th, 1879.
J. W. CALLAWAY, *Clerk,*
By W. S. EAKIN, *D. C.*

52 JANUARY 16, 1879.

Comes the defendant, The Little Rock Water Works Company, by John McClure, its solicitor, and by leave of the court files herein its response, contesting the appointment of a receiver prayed for in the complaint heretofore filed herein, and said defendant also, by leave of the court, files its exhibits to the response filed herein.

Response of Little Rock Water Works Company, contesting the appointment of the receiver prayed for in the complaint herein.

Now comes the Little Rock Water Works Company, one of the defendants herein, and not answering to the cause of action set forth in said complaint, but only by way of response to so much of said complaint, and to the notice served that an application would be made in the above entitled cause for the appointment of a receiver to take charge of certain property in said complaint mentioned and described
53 as having been seized upon and under order of attachment obtained out of the circuit court of Pulaski County, Arkansas, wherein this defendant is plaintiff and Dennis Long & Co. are defendants, states:

That under the provisions of an ordinance of the city council of the city of Little Rock, passed on the 23rd day of November, 1877, and under a contract in pursuance of said ordinance made by and between said city of Little Rock and this defendant, copies of which said ordinance and contract are hereto attached, marked Exhibit No. 1, and made part hereof, the exclusive use of certain streets and alleys in said city of Little Rock for a period of twenty five years, to furnish and supply water to and for the use of the city aforesaid and its inhabitants, was given to this defendant upon the conditions and terms in said ordinance and contract mentioned and set forth.

That for the purpose of completing and constructing water-works

for the purpose aforesaid, in the manner and within the time in said contract and ordinance mentioned, this defendant entered into a contract with Dennis Long & Co., one of the defendants herein of the
54 city of Louisville, Kentucky, who are manufacturers of many articles, materials, machinery, pipes, &c., used in the construction of such works on the day of November, 1877, wherein and whereby the said Dennis Long & Co. undertook to construct, and agreed to build for this defendant, under his own supervision, and furnish all the materials, labor, pipes, machinery, &c., necessary to complete the same in a workmanlike manner, such a system of water-works as this defendant was bound by its said contract with said city of Little Rock to erect and maintain; and that express mention and reference was made to the ordinance of November 23rd, 1877, by way of description, and as fixing the standard, capacity, nature, and tests to be applied to said water-works to be erected by said Dennis Long & Co. for this defendant, all of which will more fully appear by reference to a copy of the contract between this defendant and Dennis Long & Co., which is hereto attached and marked Exhibit No. 2, and made a part hereof.

55 That for the purpose of enabling this defendant to comply with its said contract with said Dennis Long & Co., in the making of the payment in bonds at the time and in the manner in said contract stipulated, this defendant executed bonds of the denomination of $1,000, each payable twenty-five years after the date thereof, with interest, payable semi-annually, at the rate of eight per cent. per annum, at the Bank of America, in the city of New York, on the first days of January and July in each and every year.

That for the purpose of securing the payment of said bonds, and the interest thereon, and the creation of a sinking fund for the payment and redemption of said bonds at the time and in the manner in said bonds mentioned, this defendant, on the 1st day of January, 1878, conveyed to John G. Barret and Richard B. Alexander, the plaintiffs herein, the water-works of the defendant, together with its lands, reservoirs, machinery, pipes, properties, rights, liberties, privileges, and franchises, and all tolls, incomes, rents, issues, and profits there
56 held, and all which might thereafter be acquired by this defendant; that by the further terms of said conveyance, Edmund Urquhart was appointed a sinking fund commissioner, and by an irrevocable power authorized to receive and collect all such amounts as might become due from said city of Little Rock to the defendant; that Exhibit A, attached and referred to in the complaint, is a substantial if not a literal copy of said conveyance; and the same is referred to and asked to be made and taken as an exhibit to this response.

That at the time of executing and delivering said conveyance to the plaintiffs herein this defendant was not, as the plaintiffs and the said Dennis Long & Co. well knew, possessed of any water-works; but said conveyance by said plaintiffs and Dennis Long & Co. and this defendant was understood to convey, and was only intended to convey the water-works which Dennis Long & Co. had contracted with this defendant to erect and build, and was to become operative thereon after this defendant had acquired the same, and not before; that since the
57 execution of said conveyance, this defendant has not acquired any water-works from Dennis Long & Co., or from any other source; that at the time of the execution of said conveyance, the only lands or real estate possessed by this defendant is and was a strip or parcel of land one hundred feet front of block No. 355, in the city of Little

Rock, commencing two hundred feet east of the center of Ringo street, being the west half of the east half of said block No. 355; that since the execution of said deed of trust, this defendant has not acquired, and does not possess, hold, own, enjoy, or any other interest in lands than the interest hereinbefore mentioned.

That at the time of the execution of said conveyance this defendant was not possessed, as the plaintiffs and Dennis Long & Co. well knew, of any "rights, liberties, privileges, and franchises," save such as were dependent upon the faithful performance by said defendant and the said Dennis Long & Co. of the requirements, conditions, and stipulations contained in said ordinance of November 23, 1877; but said con-
58 veyance to the plaintiffs was by the plaintiffs and Dennis Long & Co. and this defendant understood and intended to convey only such "rights, liberties, privileges, and franchises" as would enure to this defendant when the said water-works should be completed and accepted according to the terms of said contract and ordinance with said city, and after the same had become the property of this defendant.

That Dennis Long & Co. undertook and contracted to perform all and singular the requirements of said ordinance and his said contract, and wholly failed in the performance thereof; and by reason of said failure the "rights, liberties, and franchises" mentioned in said deed of trust are not now in esse.

That at the time of the execution of said deed of trust, this defendant was not possessed, as the plaintiffs and Dennis Long & Co. well knew, of any "tolls, incomes, rents, and profits" of any water-works; but said conveyance was by the plaintiffs and Dennis Long & Co. and
59 this defendant understood to convey, and intended to convey, only such "tolls, incomes, rents, issues, and profits" as thereafter might arise from the use, operating, and enjoyment of the works which Dennis Long & Co. had contracted to erect and build for this defendant, and to apply to such "tolls, incomes, rents, issues, and profits" as might arise from the use of said water-works after the same had become the property of this defendant. That by reason of the failure to complete said water-works, as hereinbefore stated, and by reason of certain stipulations in said deed of trust, this defendant is not in, and has not at any time been in, the receipt, or entitled to receive, "any tolls, incomes, rents, issues, or profits" of any nature, kind, character, or description; and it has not at any time so been since the execution of said conveyance; nor is the defendant, under his said contract with the city of Little Rock or its articles of association, or any other authority, since the execution of said conveyance, entitled or authorized to collect
60 "tolls" or taxes, or make demand for payment for water used or furnished to the inhabitants of said city.

That the only revenue "tolls," incomes, rents, issues, and profits which might or could have accrued to the use or benefit of this defendant by reason of the erection and completion of the said water-works or such as might become due from said city of Little Rock under the ordinance and contract hereinbefore referred to with this defendant—that by the terms of the deed of trust hereinbefore mentioned all such sums as might from time to time become due to this defendant from said city of Little Rock under an irrevocable assignment of power were assigned, transferred, and set over to Edmund Urquhart, and in his hands to constitute a fund for the payment of the principal and interest of said bonds in said deed of trust mentioned, and for the further purpose of creating a sinking fund. That, under the power therein contained, and by

61 the express stipulation of said trust-deed, the said Urquhart and his successor in office was fully entitled, authorized, and empowered to receive, receipt, and collect the full amount of all sums which might become due from said city to this defendant for water furnished to and for the use of said city.

That the amount which it is claimed under and by virtue of said contract with said city now amounts to the sum of $3,665.65, which said sum is fully sufficient to pay off all of the matured coupons attached to said bonds, which this defendant is any manner bound to pay the said Dennis Long & Co., having agreed to return the July coupons of 1878 to this defendant fully cancelled, as will fully appear from Exhibit No. 3, hereto annexed and made a part hereof.

That if default has been made in the payment due from the city of Little Rock to this defendant and to the said Urquhart, that such default, by the express terms of the deed of trust hereinbefore mentioned, estops the plaintiff from enforcing payment of the principal and
62 interest of said bonds or taking possession of said property in said deed of trust mentioned, or from applying for the appointment of a receiver herein, or having the trust property sold for the payment of the said principal and interest of said bonds under a decree for foreclosure. That said city of Little Rock hath refused to accept the water-works from the defendant as completed, made, and constructed by the said Dennis Long & Co.; and defendant is advised and believes that the said city has not paid to the said Edmund Urquhart or his successor in office said sum of $3,665.65, or demand therefor been made.

That for the purpose of enabling and allowing the said Dennis Long & Co. to execute and perform their said contract with this defendant in relation to building said water works, the said Dennis Long & Co. were by the defendant allowed and permitted to enter upon the land hereinbefore mentioned and certain of the streets and alleys of the said city. That said Dennis Long & Co., in an attempted performance of their said contract to and with the defendant, did bring
63 to the city of Little Rock a considerable quantity of water pipes, of various sizes, pumps, engines, and other materials of the character generally used in the building of water works.

That much of said material, &c., was used in and about the land hereinbefore mentioned and along certain of the streets and alleys of said city; but defendant states that none of said pipes, machinery, pumps, engines, &c., so brought to said city by the said Dennis Long & Co. was ever delivered into the care, custody, control, or management, or accepted by it. On the contrary, the defendants states that the said pipes, machinery, pumps, engines, material, &c., so bought as aforesaid, has at all times, except as hereinafter stated, been under the absolute control and ownership of Dennis Long & Co. and his agents, until the same was seized and levied upon by the sheriff of Pulaski County, Arkansas, under and by authority of an order of attachment issued out of the circuit court of Pulaski County, aforesaid, in an action in said court pending, wherein this defendant is plaintiff and Dennis Long & Co. are defendants.

64 That the defendant has already advanced to Dennis Long & Co., in order to aid them in the completion of said water works, the sum of $15,000 in cash and $70,000 in bonds of the said water works company. That the defendant has all times been ready, willing, and able to perform all its agreements and undertakings with the said Dennis Long & Co. That the said Dennis Long & Co. have at all times declined to turn over said water works, as by them built and con-

structed, to and for this defendant, unless the same were accepted, without any showing that the capacity thereof is as required by said ordinance of November 23rd, 1877, and capable of showing the tests therein stipulated for, or that the material contracted for has been furnished, or said water works completed in other respects according to the terms of said contract; all of which will more fully appear by certain exhibits hereto attached, marked Exhibit No. 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, and 15, and made a part hereof.

That by reason of said neglect, failure, and refusal of the said
65 Denis Long & Co. to perform their said contract to and with this defendant, it was and had been deprived of large rents, profits, and revenue from the inhabitants of said city of Little Rock. That failing to induce said Denis Long & Co. to complete and turn said water works then erected to this defendant, brought suit in the Pulaski circuit court of Arkansas against the said Denis Long & Co. to recover damages for such failure and neglect, and caused the engines, pumps, machinery, pipes, material, &c., of the said Denis Long & Co. to be attached by the sheriff of Pulaski County, aforesaid, as will fully appear by Exhibit B attached to the complaint herein, and a copy of said order of attachment in said cause issued, with the return of the sheriff thereon, a copy of which is hereto attached, marked Exhibit No. 16, and made a part hereof; and that said property is now in the custody of said sheriff awaiting the further order of said Pulaski circuit court.

Defendant submits that if the property aforesaid, so seized as aforesaid by said sheriff, is or was conveyed by this defendant to the
66 plaintiffs under the grants and terms of said deed of trust, that said plaintiffs have a plain and adequate remedy at law recover possession of the same, without raising, or attempting to raise, an unseemly conflict of jurisdiction between this honorable court and the circuit court of Pulaski County.

That all the bonds aforesaid, to wit, $70,000, mentioned in said complaint, were by the defendant delivered to Denis Long & Co.; that it is advised and believed, and so charges the truth to be, that all of said bonds are the property of Denis Long & Co., or under his control or subject to his orders; that it, the defendant, is informed and believes, and so charges the truth to be, that the plaintiffs instituted this suit and proceedings at the sole instance and request of Denis Long & Co., or their agents or attorneys, and have made the present application for a receiver herein, with power to encumber said property of the said Denis Long & Co., and borrow money to pay the operating expenses and repairs of the same, under the pretense that said property is the property of this defendant, and subject to said deed of trust, when in truth and fact it is not, and when in truth and fact the sole object
67 of Denis Long & Co. is to use the plaintiff and this honorable court as instruments of fraud and oppression, and surreptitiously displace the lien which the defendant has acquired thereon, and to procure a lien on said property for the said Denis Long & Co., which shall be declared paramount to that of the defendant, for such amounts as the said Denis Long & Co. may be able to loan the receiver herein prayed for, under the pretense of operating and preserving said property for the use of pretended bondholders, keeping the same in repair, and furnishing the said city of Little Rock and the inhabitants with water, when in truth and fact one of the prime objects of this proceeding is to prostitute the high power of this court to aid Denis Long & Co., through the plaintiffs herein, their and his agent and attorneys, to

avoid the force and effect of any judgment which the defendant may obtain against the said Denis Long and Co. in the action pending in the Pulaski circuit court aforesaid.

Defendant submits that it would not only be inequitable, but unjust, to allow the said Denis Long & Co. to thus abuse the high power
68 of this court, or to allow the same to be so exercised as to aid the said Denis Long & Co. in perpetrating further wrongs and outrages upon said water works company, whose confidence he has abused, whose money and security he now holds without returning an equivalent therefor, and whom he now taunts and insults at a safe distance.

That this defendant, nor the said Denis Long & Co., nor any other party to this suit, is authorized at this time to demand or collect water rents from the city of Little Rock, or the inhabitants thereof; that there is no ordinance or other authority fixing the rate of tolls or water rents for water furnished by the water works erected by Denis Long & Co.; that if a receiver should be appointed as prayed for herein, this honorable court would have to fix the rates of water rents to consumers, which would be impracticable.

That the operating expenses, as appears from the allegations in said complaint, will, not including the expenses incident to the appointment of a receiver, incur a weekly expense of one hundred and fifty dollars per week over and above such water rents as can be col-
69 lected, and defendant submits that it would be both inequitable and unjust to operate said water works, even if they were the property of defendant, at any such cost and sacrifice of the trust estate; that such conduct would not and could not be in the interest of any bondholder or person having a lien on said property, or for their benefit; that in truth and fact that said property is not of a character that no user of the same would deteriorate its value at the rate of $150.00 per week, but on the contrary is of a character that, allowing the same to stand idle, would not materially effect its value.

That the only property, real or personal, which this defendant holds, enjoys, or has any ownership in, or control over, is the lands hereinbefore described, and that no income, rents, or profits are derived therefrom, and that it would be inequitable and unjust to charge said real estate with the expenses incident to the appointment of a receiver, the property being unproductive, or the expense of operating the
70 water works of Denis, Long & Co., and making the same a charge thereon, even if certain inhabitants should not be supplied with water from said works.

Defendant denies that said Denis Long & Co. constructed said water-works to supply water to the city and inhabitants of the city of Little Rock; but states that the same were built to their present status, for this defendant, under the contract hereinbefore referred to, but not in accordance therewith.

Defendant denies that the order of attachment issued out of the circuit court of Pulaski County aforesaid was levied upon the property or any part or portion of the property of this defendant described in said deed of trust; but avers that said order of attachment, so issued and levied as aforesaid, was levied upon the property of Denis Long & Co., and not upon the property of this defendant, as it is alleged in the complaint herein.

Defendant denies that the operating of the water-works afore-
71 said is essentially necessary to the convenience and protection of the inhabitants of said city, or the security and protection of the interests of the bondholders, or the material constituting said water-works; and

defendant denies that there are any dues accruing to this defendant for the water furnished by said water-works to the citizens and inhabitants of said city, and states that ample power and authority is conferred upon the commissioner of the sinking fund, created by and in said deed of trust to collect any and all amounts which may be due this defendant from the city of Little Rock under the contract between said city and the defendant.

Defendant has no knowledge sufficient whereon to found a belief as to whether Dennis Long & Co. have advanced and paid out $150.00 per week in order to meet the expenses of operating said water-works. That if any such sum was paid it was not to this defendant or any of its agents, but to the agents and employees of Denis Long & Co. That Denis Long & Co. were not then and are not now under any
72 moral or legal obligation to operate said water-works; that thus far the furnishing of water to those who receive the same free of cost was an enterprise of Demis Long & Co., and if not lucrative the said Dennis Long & Co. are under no obligation to any one to continue it.

Defendant denies that there is now or that there ever was any litigation or dispute between the city of Little Rock and this defendant about the terms and fulfillment of their mutual contract: or any difference which in any manner authorized or required Denis Long & Co. to either operate said water-works, or advance money therefor, and that no advances have been made by the said Denis Long & Co., or services rendered which have not been fully paid for by this defendant.

Defendant admits that it is not doing anything and has not done anything to preserve and protect said property of the said Denis Long & Co., now held under an order of attachment by the sheriff of Pulaski County as aforesaid, and for reason therefor states that it never
73 had any ownership therein, or right so to do; but that the same is now in the custody of the law, under and by virtue of the proceedings hereinbefore described; that the court authorized the seizure, and the officer having the same in custody and chargable by law with the care and preservation thereof, and that said sheriff is faithfully performing his duty in that behalf.

Defendant denies that it is necessary to authorize the receiver, prayed for herein, to borrow money to make repairs on said water-works, or to operate the same; or to preserve said property; or to protect the interest of any bona fide holder of said bonds, and states that there is no necessity for operating the same or making repairs thereon; but that if any such necessity exists, the court, in whose custody the same now is, has ample power to make and will make all necessary orders for the preservation of said property.

Defendant denies that any bondholder, save and except Dennis Long & Co., desire said water-works of Denis Long & Co. shall be op-
74 erated at a loss of $150.00 per week, and the additional costs incident to the appointment of a receiver, and states that it is not probable that any other bondholder than Denis Long & Co. have any knowledge of the present attempt to have a receiver appointed, with the power in said complaint prayed; or of the attempt now being made to set up and consume, by unnecessary costs and expenses, what little trust estate is within the grants contained in said deed of trust.

And for other and further cause against the appointment of a receiver, with the power prayed for in said complaint, defendant states that it is nowhere alleged in said complaint, nor does it appear therefrom that the defendant was ever possessed of, or is now possessed of, any interest in a water works, reservoirs, machinery, pipes, properties, rights,

privileges and franchises, or entitled to receive tolls, incomes, rents, issues or profits therefrom, or of the property over which this court is asked to appoint a receiver.

That from the face of said complaint and the exhibits thereto
75 attached and made a part thereof it affirmatively appears that the right of the plaintiffs to institute a suit against this defendant for the principal and interest claimed before maturity was contingent and dependent upon a presentation of the coupons attached to said bonds at the Bank of America, in the city of New York, and making a demand for the payment thereof, and a refusal or neglect by the defendant to pay the same; and defendant states that it does not appear from said complaint that any of the matured coupons attached to said bonds was at any time before the commencement of this action presented at the Bank of America, in the city of New York, and demand for payment made, or that said defendant failed and neglected to place a sufficient sum of money in said bank to pay the coupons attached to said bonds which had matured; and the defendant says that until such presentation and demand has been shown, and a neglect and failure on the part of this defendant to pay the same, the plaintiffs have no right to maintain this action or have a receiver appointed to take possession of
76 the property of this defendant.

That from the face of said complaint and the exhibits thereto attached and made part thereof, it affirmatively appears that the right of the plaintiffs to institute a suit against this defendant for the principal and interest claimed before maturity, or to have a receiver appointed over any property of this defendant, was made contingent and dependant upon a default made in the payment of some one or more of the semi-annual payments of interest due upon said bonds for a period of ninety days; and it also appears from the face of said complaint, and the exhibits thereto attached and made a part thereof, that if the said city of Little Rock should fail to pay such amount as might be due the defendant at the time and in the manner agreed upon in the contract existing by and between said city and this defendant, then and in that event the failure so caused by the said city of Little Rock was to exonerate this defendant from all blame in not paying said semi-annual interest, and the said plaintiffs were not to be vested with any power
77 in the premises so long as the said city of Little Rock made no default to make such payments, and defendant states that it does not appear from said complaint whether or not said default, if any is aver'ed, was not caused by a failure on the part of the city of Little Rock to make such payments to this defendant as by its said contract with this defendant it was bound to do. And defendant says that until it was made to appear affirmatively that the default alleged in the non-payment of the semi-annual interest on said bonds was not caused by a failure on the part of the city of Little Rock to make such payments to and for the use of this defendant as by its said contract it was bound to do, the plaintiffs have no right to maintain this action or have a receiver appointed to take possession of the property of this defendant.

That it appears from said complaint and the exhibits thereto attached and made a part thereof, that even after default made by the defendant in the payment of any one or more of the semi-annual payments
78 of interest on such bonds, that such default was not of itself to confer any authority on said trustees, in said deed of trust mentioned, who are the plaintiffs herein, to, on their motion, *to* take possession of the property and franchises, by themselves, agents, or otherwise, or to ask for the appointment of a receiver to operate the same;

or to have said property sold under a decree of foreclosure: but that the power of said trustees, the plaintiffs herein, to act, was dependant upon the written request of the holders of a majority of said bonds then outstanding: and defendant states that it does not appear from said complaint, or the exhibits thereto attached, that a majority in amount of the holders of said bonds have, in writing, requested the plaintiffs to bring this suit, or pay for the appointment of a receiver to operate the same; or to have said property sold under a decree of foreclosure; and that until it is made to appear, affirmatively, that a majority, in amount, of said bondholders have, in writing, requested said trustees, the plaintiffs herein, to bring this action or maintain the same, the plaintiffs have no right to prosecute this suit, or have a re-
79 ceiver appointed.

That said complaint is in other respects insufficient and informal and does not state facts sufficient to entitle the plaintiffs to prosecute this suit or have a receiver appointed to take charge of said property.

JOHN McCLURE,
E. W. KIMBALL, AND
HENDERSON & CARUTH,
For Little Rock Water Works Co.

STATE OF ARKANSAS.
County of Pulaski:

I, Geo. P. C. Rumbough, do solemnly swear that I am secretary of the Little Rock Water Works Company; that the facts stated in the foregoing response are true, and that the matters and things stated on information and belief he believes to be true.

GEO. P. C. RUMBOUGH,
Sec'ty L. R. W. W. Co.

Sworn to and subscribed before me this 15th day of January, 1879.
[SEAL.] J. G. BOTSFORD,
Notary Public.

80 Filed in open court January 16, 1879.
J. W. CALLAWAY, *Clerk*,
By W. T. EAKIN, *D. C.*

Exhibit No. 1.—Referred to in response of defendant.

ORDINANCE No. 11.

Be it ordained by the city council of the city of Little Rock:

SECTION 1. That for the purpose of securing a supply of wholesome and filtered water for public and private purposes, there is hereby granted to the company known as the Little Rock Waterworks Company, a corporation duly organized under the laws of the State of Arkansas, the privilege of laying water mains and pipes in and under all streets, alleys, and public places in said city of Little Rock, for the term of twenty-five years from and after the taking effect and acceptance of this ordinance, subject to the conditions hereinafter set forth: said mains and pipes shall be so laid that there shall be two feet and six inches between the top of said mains and pipes and the grade line of
81 streets as may be now or hereafter established by the city: Provided, That if such mains and pipes be not so laid when first put down, and the said city shall hereafter require them to be so laid, the cost and expense of having them so laid shall be paid by the said waterworks company.

SECTION 2. Said company shall accept, in writing, the terms and conditions of this ordinance within ten days from this date, and upon legal ratification of the contract the mayor shall announce the fact and thereby fix the date of the franchise hereby created. Said notice shall be in words as follows, to wit:

Waterworks Notice.

MAYOR'S OFFICE,
City of Little Rock, , 1877.

Notice is hereby given that the corporation known as the "Little Rock Waterworks Company," has this day filed in the city clerk's office, under their official seal, their acceptance of the contract granted and made by the city council of the city of Little Rock, by an ordinance entitled "An ordinance in relation to waterworks, and granting
82 certain rights and privileges to the company known as the 'Little Rock Waterworks Company,'" and that they have signed said contract as required therein.

Therefore, I now declare by virtue of said ordinance, that this contract with the city of Little Rock commences on this day of , 1877, and will last and continue by virtue of and under the restrictions, limitations, and provisions of said ordinance aforesaid, and subject to all the forfeitures therein contained, until the day of , 18 , and for the period of twenty-five years from this date.

Mayor.

Within ten months thereafter the said company shall have its waterworks, upon the direct-pressure system, comprising two engines with seperate boilers and pumping apparatus attached to each, each of said boilers to have seperate engines attached for the purpose of supplying said boilers with water, and each having a pumping capacity, when the piston is travelling not over 150 feet per minute, to furnish 750,000 gallons of water each and every day; six miles of mains, seventy-five
83 double hydrants, at eighty-five dollars each per annum for ten years, and any additional number, at seventy-five dollars each per annum, and the requsite stop-valves and other appendages in full operation; said works not to cost less than $93,000.

SECTION 3. Said hydrants shall be placed in such positions along the lines of mains as the city council may direct, and said works shall be capable of throwing eight streams of water at one time, each through 500 feet of hose, and through nozzles one and one-quarter inch in diameter, to the height of 100 feet at any place in said city, of grade not higher than Main street where intersected by Markham street, and shall be capable of throwing three streams of water at one time through 500 feet of hose and nozzles of one and one-quarter inch in diameter sixty feet in height at any other location on the line of said mains. Said mains shall be of the following dimensions, to wit: two hundred feet of said mains shall be fourteen inches in diameter; 1,200 feet thereof shall be twelve inches in diameter; 5,280 feet thereof shall be ten inches in diameter; 19,720 feet thereof shall be 6 inches in diameter; and the
84 same shall be laid in such streets as the company may elect, subject to the approval of the city council of said city. The machinery to be provided by said company shall be capable at all times of complying with the requirements of this ordinance in time of fire over and above the ordinary water supply. The said company

shall be bound to change the location of any of the hydrants contemplated by this ordinance, as the city council of said city may at any time direct, but the necessary and reasonable cost and expense of such change of location shall be paid by said city.

SECTION 4. The company shall at all times, day and night, be prepared to perform the duties aforesaid, and to furnish the water in the quantities and manner aforesaid, and a failure to do so, unless occasioned by unavoidable accident, or a failure to comply with any part of this ordinance, shall, at the option of the city council, operate as a forfeiture of the sum of forty dollars per hour for each and every hour such failure shall continue to exist, the amount or sum total of such forfeiture to be deducted by said city from any sum or sums then due or to become due from said city to said company for use of hy-
85 drants; and in the event that the amount of any such forfeiture shall be in excess of the sum or sums so due or to become due, such excess shall be and constitute a lien in favor of said city upon the works and machinery of said company, relating back and being preferred to all other lines that may in any manner attach thereon.

SECTION 5. In laying or repairing said mains and pipes, due care shall be taken to obstruct the public convenience as little as the case will admit of, and the company shall restore the streets, alleys, and places disturbed by its employés to the condition in which they found them with the least practicable delay, and shall not disturb or injure in any way any of the sewers and gutters of the city, or of any pipes laid in streets, alleys, and other public places of the city.

SECTION 6. In consideration of the use of the water and said hydrants for the purposes of extinguishing fires, and the use of water needed and to be used in and about all city buildings, and water to fill and keep full the public cisterns of the city, to be used for extin-
86 guishing fires, to be furnished by said company, the city of Little Rock agrees to pay to said company the sum of eighty-five dollars per annum for the next ten years, payable quarter-yearly, for each of said seventy-five hydrants, and seventy-five dollars per annum payable quarter-yearly, for each of said hydrants after ten years, which payments shall commence pro rata as soon as ten hydrants are erected and ready for use, and so on pro rata as each and every additional hydrant is so ready, and after seventy-five hydrants are in and so ready for use as above stipulated, the said quarterly payments are to be made by the city of Little Rock upon the first of January, April, July, and October, of each successive year; said amounts to be paid for such hydrants for the purpose of extinguishing fires and for other purposes heretofore mentioned shall be paid out of the general fund raised by the tax provided for general purposes.

SECTION 7. That said company is hereby empowered and authorized to charge all private consumers the following prices per annum as water rates, to wit:

87 Private dwellings, per annum:

For 1 or 2 rooms	4 00
For 3 or 4 rooms	5 00
For 5 or 6 rooms	6 00
For 7 or 8 rooms	8 00
For 9 or 10 rooms	10 00
For each additional room	50
For houses occupied by more than one family, to the above rates add for each family over the above *one* the sum of	3 00

Boarding houses and hotels, per annum:	
For 1 or 2 rooms	6 00
For 3 or 4 rooms	7 50
For 5 or 6 rooms	9 00
For 7 rooms	10 50
For each additional room	1 50
For hotels, each room	1 50
Or for 1,000 gallons by meter or estimate, 15 to 35 cents.	
Stores, shops, etc., per annum:	
For wholesale and retail stores and shops	$3 to 20 00
For offices and sleeping rooms	$3 to 20 00
Saloons, per annum:	
88 For drinking	$10 to 45 00
For eating and coffee houses, per table	1 50
For ice-cream, per table	50
For lager-beer, per table	50
For billiards, per table	3 00
For bowling, per alley	3 00
Stables, per annum:	
For livery and sale, per stall	1 75
For livery, for each wheeled vehicle	1 25
For livery, for each vehicle if washed with hose	3 00
For private stable, for each horse or mule	1 50
For private stable, for each cow or head of cattle	1 00
For private stable, for each carriage, buggy, or vehicle	1 25
For private stable, for each carriage, etc., if washed with hose	3 00
For government stables, for each horse or mule, taking the average for the year	1 25
For stock yards, per head of stock, taking the average for the year	1 25
Hose attachments, per annum:	
89 For sprinkling streets and washing sidewalks, steps, windows, and fronts of lots not over 25 feet front and half the width of the street	5 00
For each additional foot front	10
Corner lots, both fronts furnished	
For sprinkling yards and gardens and washing walks in same, per square yard	½
For sprinkling public or pleasure gardens, per square yard	1½
For street-sprinkling carts, per 100 square yards	1 50
For washing by the momentum of the jet alone, for any purpose, add per square inch area of nozzle	100 00
For protection against fire when rented for no other purpose, charge per square inch area of attachment	35 00
Baths, per annum:	
For private dwellings, cold bath, each	3 00
For private dwellings, warm bath, each	5 00
For hotels, cold bath, each	5 00
For hotels, warm bath, each	10 50
For boarding-houses, cold bath, each	5 00
90 For boarding-houses, warm baths, each	10 00
For hospitals and public bath-houses, cold bath, each	5 00

For hospitals and public bath-houses, warm baths, each	10 00
Water-closets, per annum:	
For private dwellings, each	3 00
For hotels and boarding-houses, each	5 00
For hospitals, prisons, saloons, manufactories, and all other public places	5 00
Urinals, per annum:	
For private dwellings, each	1 50
For hotels and boarding-houses, each	5 00
For hospitals, prisons, saloons, manufactories, and all other public places	5 00
Wash-basins, per annum:	
For hotels and boarding-houses, each basin, with draw	3 00
For hospitals, prisons, saloons, manufactories, and all other public places	3 00
Kitchens, per annum:	
For slop-zinc, with draw	3 00
91 For each additional	1 00
For wash-tubs, with draw, each	1 00
Building purposes:	
For stone masonry, per perch of twenty-five cubic feet	94
For brick-work, 10,000 or less	1 00
For brick-work over 10,000, per 1,000	10
For plastering, forty bushels of lime used, or less	1 00
For plastering, above forty bushels of lime, per bushel	2½
For plastering, per square yard	½
Manufacturers and artisans, per annum:	
For bakeries, per barrel of flour used	01
For breweries, per 1,000 gallons beer brewed	10
For barber-shops, for one chair	4 00
For barber-shops, for two chairs	7 00
For barber-shops, for each additional chair	2 00
*Book bindery	
Brick-yards, per 100,000 bricks moulded	
For brick-yards, per table	17 50
92 *Confectioneries	
*Candle and soap factories, per 100 pounds soap or candles made	
*Camphurs, spirit, gas, or alcohol, per 1,000 gallons manufactured	
*Camphurs, spirit, gas, or alcohol, per 1,000 gallons, washed	
*Dyers and scourers	
*Distilleries, per 1,000 gallons spirits distilled	
Founderies, each machine moulder	1 50
Founderies, each plate or hollow-ware moulder	75
*Flouring mills	
*Fountains	
Forges, blacksmiths, each	2 00
Forges, steam hammers, each	5 00
*Glue factories, per 100 pounds glue made	
*Gas works	
*Hat manufactories	
Hands in factories, when no meter is used, each	10
Hospitals, per inmate	1 00

*Laundries
*Lab'ratory
*Malting, per bushel
*Printing-offices
93 *Pork houses, per hog killed
*Packing houses, pork, barrel of meat packed
*Planing mills
*Rectifying establishments, per 100 gallons
*Rolling and paper mills
*Steam engines, per 1,000 gallons of water used
*Soap and candle manufactories per 100 pounds soap or candles made
*Slaughter houses, per hog or head of cattle killed
*Sugar refineries, per 100 pounds of sugar refined
*Soda factories, per 100 pounds of soda made
*Starch factories, per 100 pounds of starch made
*Steam boilers for heating purposes
*Tanneries, per vat
*Tobacco factories, for each person employed
*Vinegar manufactories, per 100 gallons
*Washing meat, per 100 pounds meat washed
*Woolen mills
94 *Cotton mills

A deduction of 30 per cent. on above rates will be made on churches and other places of public worship.

Assessed.

For estimating for private residences the above water rates for halls, closets, and unfurnished rooms shall not be counted.

The rates above specified shall be and continue a maximum rate, and shall be paid monthly in advance; and said company is hereby ordered to charge such persons and consumers as may desire and elect to pay for water privileges by the gallon, maximum rates as follows, to wit:

100 to 500 gallons per day, per 1,000 gallons ..... .30
500 to 1,000 gallons per day, per 1,000 gallons ..... .30
1,000 gallons or over per day, per 1,000 gallons ..... .25

Water consumers shall be charged for service pipes from the center of the street to the inside of the sidewalk, but all service pipes shall be furnished and laid by the company at actual cost; provided, that
95 nothing herein contained shall prevent consumers, at their option, from employing any other plumbing company to furnish and lay the said service pipe.

SECTION 8. Said company shall not be liable for damages to private property, caused by unavoidable accidents to the mains or other appurtenances, nor for cessation of water supply caused by unavoidable accident or necessary repairs, but in case said city is held responsible on suit for any such, said water works company shall reimburse said city for any damage that may be adjudged against her therefor.

SECTION 9. It shall not be lawful for any person to deposit any building material or other obstruction in front of or near any fire hydrant, so as to prevent ready access to same by the fire department.

SECTION 10. After the expiration of the said term of years the said city shall have the option to purchase said water-works, at the appraised valuation thereof, to be ascertained in the following manner, viz:

Said city shall give the said company, in writing, one year's notice of

its intention to take said works as aforesaid, whereupon said city
96 shall appoint two appraisers, and the four so chosen shall choose a fifth, and the five so selected shall proceed to value all machinery, pipes, buildings, and material then on hand, belonging to said company, and a decision of a majority shall be binding upon said city and said company, and, upon the payment of the amount so determined to said company, it shall at once deliver to said city all of said property, and make the said city a good and sufficient conveyance of the same, with all franchises, privileges, and appurtenances in any wise belonging or pertaining thereto, free from all lien or encumbrance; but it is hereby provided in case the four appraisers, chosen as aforesaid, shall refuse or neglect, for thirty days after having been appointed as aforesaid, to select a fifth, then, in that case, either party may apply to the chief justice of the court of last resort in the State of Arkansas, who shall appoint the fifth appraiser, and it is also understood that a failure on the part of said company for thirty days to select the two appraisers, as heretofore provided, shall authorize said city to apply to the chief justice of the court of last resort of the State of Arkansas, who shall
97 appoint said two appraisers, as is provided of the fifth appraiser, but said city, instead of paying said appraised valuation in cash, may, at its option, pay the one-third thereof in cash, and the balance in two equal annual payments, with interest thereon at the rate of ten per cent. per annum.

SECTION 11. Should said company be required by said city to erect more than seventy-five hydrants within the period of ten years from this date, the city shall pay $75 per annum for each hydrant in excess of seventy-five hydrants.

SECTION 12. The city council shall hereafter pass all requisite ordinances for the protection of the property of the company, and each regular employé of the company may be made, by appointment of the mayor or police committee, temporary or special policeman, authorized to arrest all persons found defacing or injuring any part of the apparatus, and all persons who shall wilfully disturb, misplace, injure or destroy any of the mains, hydrants or other property of said company shall be deemed guilty of a misdemeanor, and shall be fined not less than five dollars
98 nor more than twenty-five dollars for every such offense, to be enforced as other city penalties; and such person shall also be liable to said company in an action for damages.

SECTION 13. Where a main is laid in a street, and five property owners residing immediately beyond the terminus of said main agree to use and guarrantee to pay for the water to the extent of 8 per cent. on the cost of the extension of the said main, when said extension is ordered by a two-thirds vote of the city council, until the said company shall have extended their main, beyond the houses of the said property-owners, the company shall extend said main 360 feet for their accommodation, subject to a forfeiture of their franchise upon a refusal to do the same, at the option of the city council.

SECTION 14. The authorized agents of the company shall have the right to enter upon the premises of any consumer of water furnished by the company, for the purpose of examining the pipes and fixtures, and preventing waste, and in the event that any consumer permits waste of water, then the company may shut off the water supply from said premises.

99 SECTION 15. That any person or persons who shall take or use any of the water of said company for domestic or other purposes without having previously contracted for the same with said company

shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than five nor more than twenty-five dollars, to be enforced as other city penalties.

SECTION 16. The said company is hereby authorized to condemn and appropriate, in the mode provided by law, so much private property as may be necessary for the construction and operation of said water-works, they paying all costs, expenses, and damages accruing.

SECTION 17. That in laying down the pipes and conduits necessary to supply the city with water, it is hereby expressly provided that no authority is conferred by the council to interfere with rights and privileges heretofore granted to the Little Rock Gaslight Company, and to railroads and other public corporations holding under the city; and it is expressly provided that said water-works company, in laying its mains and pipes, and enjoying the privileges herein granted, shall
100 not in any manner disturb or displace any of the permanent monuments of the said city, or street-crossings, and other places. This grant to said water-works company, being conferred with the express conditions that said company shall be liable for all injury to persons or property caused by the negligence, mismanagement or fault of itself or any of its employés, while engaged in the construction of operating said works, and should the city be sued therefor, the company, or some officer thereof, shall be notified of said suit, and thereupon it shall be the duty of said company to defend or settle the same, and should judgment go against the city, in such case the city shall recover the amount, with all costs, from the company, and the record of the judgment against the city shall be conclusive evidence in the cause to entitle the city to recover in any suit therein against the company.

SECTION 18. That, for the purpose of securing a prompt compliance with the obligations herein assumed by the said water-works company, and in consideration of the privileges granted herein by the city,
101 the said water-works company shall, within sixty days after the signing of this contract, commence their said works, and shall vigorously prosecute the same until completed and in full operation, as required in section 2 of this ordinance.

And as a forfeit and earnest of their prompt good faith in the premises, the said water-works company shall, immediately upon the acceptance of said contract, place in the hands of the city treasurer of the city of Little Rock, as trustee, the sum of $2,500 in United States currency, upon the following conditions:

1. That if said works are in good faith commenced within the time specified in this contract, and completed and in full operation by the time required by section 2 of this ordinance, then in that case said deposit shall be paid over to said water-works company free from all claims of the city.

2. If, however, the said water works company fails to commence said works within the time required, or, having commenced, fails to complete said works within the time required herein, then, and in that event, the said money so deposited shall forthwith be forfeited to the city,
102 and the same shall be turned into the city treasury by the city treasurer of Little Rock, trustee as above, upon notice given him by the mayor of the city that the said water-works company has failed to comply with their contract; and upon a failure to complete said works in the time specified herein, then and in that event the said Little Rock Water-works Company shall forfeit all the rights, grants, franchises, and privileges granted herein, and this contract shall cease to have any force or effect.

SECTION 19. The privileges granted in the ordinance are granted upon the further conditions that the water to supply the city for fire purposes shall be taken from the Arkansas River, near or at the foot of Ringo street, direct from the river; and water for domestic purposes shall be thken from a well not less than twenty five feet in diameter, which shall be located at such place; that the mouth thereof shall be above high-water mark, and the water therein contained shall not rise and fall with the rise and fall of the Arkansas River, or be subject in any way to the flowage therein of surface water. Said well shall
103 at all reasonable times be subject to the view and inspection of any committee of the council appointed for that purpose; and if the condition or water thereof shall be disapproved or condemned by a majority of such committee, and their reasonable objection thereto be not removed within two weeks after the said company shall be notified of the same, it shall be lawful for said city to have such objections satisfied by any repairs necessary and proper for that purpose, and deduct the expense of the same from any sum or sums that may be or become due from her to said company.

SECTION 20. It is provided that said water-works company shall at all times maintain a maximum pressure of thirty pounds per square inch in the mains upon the elevated or highest portions of the city.

SECTION 21. In constructing said works said company shall keep an exact account of the money actually paid out by them in the said construction, which said account shall, as the work progresses and at all other times, be subject to the inspection and examination of any committee appointed by the city council for that purpose, in order to
104 ascertain the exact cost of said works.

SECTION 22. That ordinance No. 8, passed October 4, 1877, and ordinance No. 10, passed October 27, 1877, be and the same are hereby repealed, and all ordinances and parts of ordinances in conflict with this ordinance, or any part thereof, be, and the same are hereby, repealed.

Passed November 23rd, 1877.

JOHN G. FLETCHER, *Mayor.*

Attest:

CHARLES E. KIDDER,
City Clerk.

Exhibit No. 2, referred to in response of defendant.

This agreement, made and entered into in the city of Little Rock, in the State of Arkansas, by and between the Little Rock Water-works Company, party of the first part, and Denis Long and Company, of Louisville, Kentucky, party of the second party, witnesseth:

That the party of the first part agrees to pay to the party of the second part the sum of one hundred thousand dollars in the manner
105 and at the times hereinafter set out, for the construction of water-works in said city of Little Rock, as hereinafter set forth. And in consideration of the said sum of one hundred thousand dollars to be paid as hereinafter set out, *for the construction of water-works in said city of Little Rock, as hereinafter set forth. And in consideration of the said sum of one hundred thousand dollars to be paid as hereinafter set out*, the party of the second part agree and bind themselves, their heirs and assigns, that they will construct, build, equip, and put into successful operation in said city of Little Rock water works for the party of the first part in full accordance with the following specifications, to wit:

200 feet of 14-inch pipe.
1,200 " " 12 " "
5,280 " " 10 " "
5,280 " " 8 " "
19,720 " " 6 " "

and all four-inch pipe requisite for constructing seventy five hydrants with the mains, which amount of pipe shall form the entire pipe
106 system under this contract.

All of the said pipes shall be cast iron water pipes, coated with Dr. Smith patent coal tar varnish, and capable of resisting a hydrostatic pressure of three hundred pounds to the square inch. They shall be smooth, sound castings, free from flaws or imperfections, with socket and spigot ends, and cast on end in dry sand moulds, twelve feet in length, and in size of bore and quantity of lineal feet as hereinbefore set out, and the said pipes with all necessary castings to wit: One cross at each intersection of streets, and one tee at each location selected for fire hydrants, with forty-three valves of the most approved pattern, and cast iron valve boxes shall be laid by party of the second part in such streets and places as the party of the first part shall direct the party of the second part in writing, in trenches of a depth sufficient to make the tops of the pipes lie thirty inches below the surface grade of the streets wherein the same may be located; the joints of the said pipes
107 and castings shall be packed with good hemp gasket to the depth of one inch, and the remainder of the space in the socket shall be filled with soft lead, poured in in a melted state, and then calked with a steel tool until it shall be solid and firm and perfectly water tight.

There shall be seventy-five hydrants of the pattern of the Mathews fire hydrant of Philadelphia, with double nozzles made to fit the hose couplings now in use by the fire department of said city. The said hydrants to be set in such places as may be selected by the party of the first part, on the sides of the streets nearest to the pipe lines, and only in such of the streets where the pipes may be laid, and connected to the tees laid in the pipe lines by 4 inch cast iron pipes.

For the supply of water to said pipe system there shall be two steam pumps with condensing or low pressure engines of the most modern and approved style and finish, with the combined capacity of pumping
108 of not less than one and one-half millions of gallons of water in twenty-four hours, against a hydrostatic pressure of one hundred and fifty pounds to the square inch, equal to an elevation of three hundred feet.

The boilers to be two in number and made of the best Tennessee iron 3-8 thick, 48 inches in diameter, and twenty feet long, each with twelve six-inch flues, and each with a steam dome and mud drain separately, the said pumps and boilers to be arranged substantially as shown in the design or pump house and stand pipe by Travers Daniels of Louisville, and which is made part of this contract. The said pumps and boilers shall be placed, set, and connected as shown in said design, with all the necessary fitings of every character requisite for their complete, efficient, and successful operation, as the operative machinery of the Little Rock Water Works Company.

The said water works shall be constructed and arranged to work on the direct pressure plan, with lever safety valves and waste pipes
109 and substantially as shown in the design before mentioned, and shall have the full capacity, as required by the city council of said city as set forth in ordinance number eleven, "An ordinance entitled

an ordinance in relation to water works, and granting certain rights and privileges to the company known as the Little Rock Water Works Company," which ordinance so far as it relates to the construction of the said water works is made a part of this contract.

In addition to the foregoing machinery for operation as "direct pressure" works, the party of the second part agree to construct and erect a metallic reservoir stand pipe, twenty feet in diameter and one hundred feet high, of rolled plate iron, of which the bottom and the first two rings of the sides shall be $\frac{5}{8}$ of an inch thick, and the next forty feet in height shall be 4-8 of an inch thick, and the next twenty feet in height shall be $\frac{3}{8}$ of an inch thick, and the remainder of the height shall be 2-8 of an inch thick.

The top of the reservoir shall be closed with an iron cover $\frac{1}{4}$ of an
110 inch thick, and slightly convex on the upper surface, and securely rivited to a four-inch angle iron, firmly rivited to the inside of the reservoir at the top, and with sufficient apperture around the edges of the cover to correspond with the area of the pump pistons.

And the said reservoirs shall be located at and on such grounds as may be furnished by the party of the first part in the said city, and the shape and proportion of the said stand-pipe and its foundation shall be substantially as shown in the design before mentioned.

The right of way for all purposes and the lands for all structures shall be furnished by the party of the first part free of charge or expense to the party of the second part.

The party of the second part further agrees to construct and build a brick pump-house and smoke-stack of the size and dimensions as shown in the plan aforesaid, all of the material to be first class, and the workmanship is to be well and substantially executed.

The size of the steam cylinder of the supply-pumps shall be
111 thirty inches in diameter and capable of eighty horse power.

The well curb shall be of brick laid in cement thirteen inches thick, and shall be twenty feet in diameter, and fifteen feet below low water mark in the Arkansas River, and the location of the well and pump house to be at or near the foot of Ringo street.

Outside of the foregoing articles, the party of the second part shall not be obliged to furnish anything under this contract.

And the party of the second part bind themselves, their heirs, and assigns to commence the construction of said water works within thirty days from the date of this signatures to this agreement, and to complete the said works and to put them into operation within the limit by the said ordinance No. 11 hereinbefore referred to.

The payments of the said one hundred thousand dollars hereinbefore mentioned shall be as follows, to wit:

Twenty thousand (20,000) dollars in cash and eighty thousand dollars (80,000) in the first-mortgage coupon bonds of the said
112 water works company, secured by a good and sufficient mortgage on the water works, including all of the properties of whatever nature; its pipes, machinery, rights, and franchises and privileges in esse and after acquired. Said bonds shall be of the denomination of one thousand dollars each, payable to bearer, numbered from one to eighty, both numbers inclusive, bearing eight per cent. interest per annum, payable semi-annually at some bank or trust company in the city of New York, the principal maturing in twenty-five years from the date of issue; said bond shall be a satisfactory, valid bond and mortgage, and the party of the second part shall have the right of settling

the terms of said mortgage as to the details thereof, and to draft the said mortgage and the said bonds.

The payments shall be made monthly on estimates for work done and material delivered, commencing by the payment of the cash, and after the same shall have been ex'austed, proceeding in like manner
113 with the payments in the bonds.

In the event that the party of the first part shall desire to have time on the last five thousand dollars of the said cash payment of twenty thousand dollars, it may pay the said sum of five thousand dollars, by the joint individual note of such of the members of the company of the party of the first part whose credit is good in bank, not less than three in number, and to be subject to the approval of the party of the second part for a term not exceeding six months, bearing interest from date until paid, at the rate of eight per cent. per annum, negotiable and payable at the Citizens' National Bank of Louisville, Kentucky, to the order of the party of the first part, and endorsed by it.

And for the faithful performance of this agreement, and in testimony thereof, the said Little Rock Water Works Company has affixed to these presents its corporate seal, and has caused its president and secretary to subscribe the same for the said company this 24th
114 day of November, 1877, in the city of Little Rock aforesaid, and the said Denis Long and Co. have subscribed the same and have affixed their private seals thereto.

And it is further agreed by the party of the second part that ten per cent. of the entire amount to be paid for said water-works shall be retained in bonds until the satisfactory completion and acceptance of said water-works by the city council of Little Rock.

JOHN WASSELL, *Pres't.*
DENIS LONG & CO.

[SEAL OF THE L. R. W. W. CO.]
GEO. P. C. RUMBOUGH,
Secretary L. R. W. W. Co.

Amendment to the contract.

This agreement, made and entered into the 29th day of December, 1877, in the city of Little Rock, Ark., by and between the Little Rock Water-Works Company of the first part and Dennis Long & Co., of Louisville, Ky., of the second part, witnesseth:
115 That for and in consideration of the mutual agreement of the parties hereto, and for divers other good and sufficient considerations, all the terms regarding the payment of the sum of one hundred thousand dollars, provided for in a contract dated November 24th, 1877, heretofore entered into by the parties hereto, are abrogated, and in their stead the following is substituted:

The payment of the said sum of one hundred thousand dollars shall be made in monthly installments, on estimates for work done and materials used; one-fifth thereof in cash and four-fifths parts thereof in the first mortgage bonds of the Little Rock Water Works Company.

Witness the hands of the parties hereto, and the seal of the party of the first part, the day and year first above written.

JOHN WASSELL,
President of Little Rock Water Works Company.
DENNIS LONG & CO.,
By WM. REINECK,
Their Att'y.

[SEAL OF THE L. R. W. W. CO.]
Attest:
GEO. P. C. RUMBOUGH,
Sec'ty L. R. W. W. Co.

116 *Exhibit No. 3. Referred to in response of the defendant, the Little Rock Water-Works Company.*

LOUISVILLE, KY., *Feb'y* 28, 1878.

Received of the Water-works Company of Little Rock, Ark., on contract, forty-five bonds (first mortgage) of one thousand dollars each, etc.

We agree to return, at maturity, to said company, the first coupons on said bonds, due July 1, 1878, and upon settlement with us for what is now due us on contract on said mortgage bonds and as per contract.

DENNIS LONG & CO.

JAS. G. NORES, *Witness.*

I engage to become surety to the Little Rock Water-Works Company that Dennis Long & Co. will give to said company forty-five of the first coupons on said bonds as above.

JOHN LONG.

Exhibit No. 4. Referred to in response of defendant.

117 SECRETARY'S OFFICE, LITTLE ROCK WATER-WORKS CO.,
Little Rock, Ark., June 14, 1878.

MESSRS. DENNIS LONG & CO.,
Louisville, Ky.:

GENTS: I am directed by the board of directors to make the following reply to your letter of the 10th inst., handed me by Mr. Reinicke, your attorney. In that letter you say Mr. Reinicke "is fully empowered to make settlement with the board according to contract, &c."

As the contract is yet very far from being complete on your part, we are at a loss to conceive how any settlement can be made until the completion and reception of the works according to contract. We trust you will see the necessity of pushing the work to an early completion, so that the company may tender it to the city, and fully liquidate and discharge any amount that may be found due you on said contract.

We need not add how much we have been disappointed in your not completing the work by the 15th of April, as promised by your
118 Mr. Miller, when here, and on which promise we made such liberal advances.

We feel that we have fully complied with our part of the contract and stand ready to liquidate the whole matter upon its reception and completion.

Your ob'd't serv't,

JOHN WASSELL,
Pres't L. R. W. W. Co.

Exhibit No. 5. Referred to in response of defendant.

[Published in the Little Rock Daily Gazette.]

NOTICE.

LITTLE ROCK, ARK., *August* 7, 1878.

To the citizens of Little Rock, Ark.:

Our contract with the Little Rock Water-Works Company has been completed except the furt'er sinking of the well, which has been delayed on account of the high state of water in the river. What remains to be done is solely independant of the steady supply of water for fire protection and for private consumption.

In order to give the citizens the benefit of the comforts of the water-works as soon as possible, we have for some months operated the
119 works and supplied consumers without charge to them or to the water-works company, and without any pecuniary benefit to us.

We have demanded of the water-works company a settlement of the amounts now due us, but have failed to get satisfaction. We are now about to complete the well. As we do not know how long the company will leave the works on our hands, notice is hereby given that from and after this date, and until our amounts against the water works company shall have been paid, the water works will not be operated by us for the supply of water for private consumers.

Very respectfully,

DENNIS LONG & CO.

Exhibit No. 6. Referred to in response of defendant.

EDITOR OF ARKANSAS DEMOCRAT:

A notice in the daily Gazette of to day, signed by Dennis Long & Co., in reference to the Little Rock Water-Works Company demands a response from said company.

120 To begin with we have only to say of the entire notice most of its contents are untrue; the well and other parts of said works are not completed, as every citizen of Little Rock knows. The pipes are laid, the pump-house is built, and the engines are located; whether according to contract no one can tell; whether the pumps will do what is required by contract or not no one can say, as no test has been made.

It is true Messrs. Dennis Long & Co. have furnished to the citizens water for the last six weeks free of charge, and it is also true that Messrs. Dennis Long & Co. agreed positively with the directors of said water-works company the night before their notice appeared that the water should be continued, the water-works company guaranteeing all expenses in so continuing said water.

Now in the face of their agreement the notice referred to is sent to the Gazette for the public and the water shut off. This, we may add, is about in character, however, with all the other promises made by said Dennis Long & Co.

As regards the matter of a settlement referred to by Messrs.
121 Dennis Long & Co. we are ready to show any one who may be curious enough to call and examine that we owe them nothing whatever until their works are entirely completed, and nothing then if the works are not in every respect to the written contract and specifications in ordinance No. 11, in relation to water-works, and as the water-

works company have no bond from Messrs. Dennis Long & Co. in the event of failure by them, we have not been just with Dennis Long & Co. but liberal, for we made advances when they were not due.

And in conclusion we say to the citizens the shutting off of the water is the act of Dennis Long & Co. and in direct violation of their positive agreement with the water-works company. They say in concluding their notice that they "do not know how long the Little Rock Water Works Company may leave the works on their hands"; for their information and also that of the citizens we will tell them: they will have them on hand until they complete their entire works in accordance
122 with the written terms of ordinance No. 11 and the written contract made in accordance with the same.

By order of the board,

GEO. P. C. RUMBOUGH,
Secretary of the Little Rock Water Works Co.

Exhibit No. 7, referred to in response of defendant.

LITTLE ROCK, ARK., *August* 14, 1878.

JOHN WASSELL,
President of Little Rock Water Works Co.:

If the company wish the works to be operated for the use of the city of Little Rock, I will immediately turn the works over to you, to be operated by your company on their own responsibility and expense, and by an engineer so competent to do, whom you may appoint, and will push the completion of the well as soon as possible, and make the requisite test, as soon as the same may be completed, according to the requirements of the city ordinance, subject to the approval of Denis Long & Co., by telegram.

T. DANIEL, *Agent.*

123 *Exhibit No. 8, referred to in response of defendant.*

TRAVERS DANIEL, Esq.,
Agent Dennis Long & Co.:

Your note to John Wassell, president of the Little Rock Water Works Co., of this date (Aug. 24) is received, in which you say you "will immediately turn the works over to you to be operated by your company on their own responsibility and expense."

We appreciate your inclination to furnish the city with water at the present time, yet you can readily see that it is entirely out of the power of the L. R. W. W. Co. to receive said works until the same is completed in accordance with the ordinance, No. 11, relating to water works, and also with the written contract made in accordance with said ordinance.

No test has been made, and for the company to run the works under the proposition which you make will endanger a conflict between the parties. Besides, we made a positive agreement with Denis Long &
Co., in person, on the 6th inst., by which he was to have the
124 water continued. The company guaranteeing to him all expenses in operating said works, we asked Mr. Dennis Long if it was necessary to put the agreement in writing, whereupon Mr. Long remarked that "with gentlemen no writing was necessary."

We know of no reason for Messrs. Dennis Long & Co. violating said

agreement, yet it was done, and if you, as agent of Dennis Long & Co., feel disposed to turn the water on again, we also again pledge ourselves to pay the entire expense of operating said works until the same is completed and test made in accordance with ordinance and contract before mentioned. The water works company, the community, and you know, that the entire control of the works are under Dennis Long & Co. and yourself as their agent.

Should you conclude to turn the water on, and operate the works, you will please send your accounts to this office for approval and payment weekly.

By order of the board:

GEO. P. C. RUMBOUGH,
Secretary L. R. W. W. Co.

125 *Exhibit No. 9, referred to in response of defendant.*

LITTLE ROCK, ARK., *Sept.* 28, 1878.

To the LITTLE ROCK WATER WORKS COMPANY,
Little Rock, Arkansas:

Please take notice that we have completed, in full accordance with our contract with you, the construction and equipment, and have put into successful operation, the water works which we contracted to build for you, and we now tender the same to you for your acceptance.

Very respectfully,

DENNIS LONG & CO.

Exhibit No. 10, referred to in response of defendant.

OFFICE OF LITTLE ROCK WATER WORKS CO.,
Little Rock, Arkansas, Sept. 28th, 1878.

Hon. JOHN G. FLETCHER,
And the Hon. City Council.

It affords the undersigned great pleasure to inform you, and your honorable body, that the contractors for the erection and completion of the Little Rock water works, Messrs. Dennis Long & Co., have
126 notified our board, in writing, of the entire completion of said water works, as required by ordinance and contract. A copy of said notice is herewith annexed. We beg to refer your honorable body to our former communications, in regard to tests, water supply, hydrants, &c.

JOHN WASSELL,
Pres'd't L. R. W. W. Co.

GEO. P. C. RUMBOUGH.
Secretary.

Exhibit No. 11, referred to in response of defendant.

OFFICE L. R. W. W. CO.,
Oct. 17, 1878.

Messrs. DENIS LONG & CO.,
Louisville, Ky.:

GENTS: Your notice of the 25th ult., informing us of the completion of your contract, is to hand and fully noticed.

The contract specifies fully what each party to the contract is to do. We stand ready to comply, on our part, at all times.

The time in which said works were to be completed has expired, and it is essential that you show at once that your works are completed; a mere written notice is no proof whatever. We say to you plainly
127 that we expect a full compliance of the contract, specification, and test.

By order of the board:

GEO. P. C. RUMBOUGH,
Secretary.

Exhibit No. 12, *referred to in response of defendant.*

Stockholders' meeting of the Little Rock Water Works Company.

LITTLE ROCK, ARK., *Nov.* 12, 1878.

The stockholders met at the office of the company, at hour of 4 p. m., in pursuance of a call on the board of directors; and there being a large majority of the stock represented in person, the meeting was called to order.

Whereupon, after various suggestions, on motion, Mr. Urquhart was appointed correspondent, on behalf of the company, to effect a settlement with the contractors.

Exhibit No. 13, *referred to in response of defendant.*

LITTLE ROCK, ARK., *Nov.* 19, 1878.

MESSRS. DENNIS LONG & CO., *Louisville:*

128 DEAR SIRS: Yours of the 16th inst. to hand, and according to your request I did myself the honor to call upon your attorney, Judge U. M. Rose. After a friendly consultation I found him of the same opinion of myself, that the controversy could and ought to be settled without delay, litigation, or ill feeling; but at the same time I found that he was only prepared to receive propositions from the company to be transmitted to you for approval; hence I stated to him that I was authorized to make the following proposition to you, viz: You deliver the works to the company, completed according to contract, plans, and specifications, and approved by the city of Little Rock; in return for which the company was ready and willing to accept the same, and prepared to pay you in full whatever balance it then may owe you in both money and bonds. What more can honorable gentlemen want? If it is as you say, the works are completed as per contract, then come here, gentlemen, prove it to be a fact, and get your money. I desire to add my personal assurance of a prompt liquidation on the part of the
129 company as soon as you discharge your obligation to it. I regret that some one of your firm was not here to examine the works before you assumed them complete. From my casual observation I feel satisfied that your personal inspection would have caused the correction of several irregularities, such as leaky mains, stand-pipe, &c. However, these are minor items and can be easily corrected. Please inform me by return mail if the above proposition is satisfactory to you; and, if not, what do you desire on the part of the company. Again assuring you of the hearty co-operation in bringing this matter to a speedy and amicable settlement, I am yours, truly,

E. URQUHART,
Committee.

Exhibit No. 14, *referred to in response of defendant.*

LOUISVILLE, KY., *Nov.* 22, 1878.

E. URQUHART, Esq.:

DEAR SIR: Your esteemed favor, 19th, received. We call your attention to our letter of this date to Mr. Rose, and which contains answers to nearly all you write of. One of us will leave here so
130 soon as we see any hope of a settlement on a fair basis. A fact of a slight leak in the stand-pipe being nothing worthy of mention on your part, and as complaint that works are incompleted seems to us as strange, and especially when large and weighty matters are unsettled, and the former would be chargeable to us had you repaired the same.

We claim in every particular to have completed contract, and your objections to that fact are technical and long before discussed. The great matter with us is to get our money and bonds and to be certain some can be had when amount is arrived at. We assure you of our continued good faith and good feeling and hope your next reply will decide us in a course to pursue.

Respectfully,

D. LONG & CO.

Exhibit No. 15.—*Referred to in response of defendant.*

NOVEMBER 26, 1878.

Messrs. DENNIS LONG & CO.:

DEAR SIRS: Yours of 22nd inst. to hand and noted. As you do not give me any definite reply to my proposition in behalf of the
131 water works company of the 19th inst., and as your replies are a series of evasions, I have concluded that any further correspondence between us would be a useless waste of time, hence drop the matter, and have so reported to the company. I cannot but think that had you met me in the same spirit in which I approached you for the company, we could have arrived at a satisfactory understanding. It is your privilege to think otherwise.

In connection with this matter I desire to render you my resignation as financial agent, a position forced upon me very much against my inclination. Moreover, I have no desire and will not be connected in any transaction that is not conducted upon honorable business principles.

Yours truly,

E. ERQUHART.

Exhibit No. 16, *referred to in response of defendant.*

Writ of attachment.

In the circuit court of Pulaski County, Arkansas.

132 LITTLE ROCK WATER WORKS COMPANY } Order of attachment.
v.
DENNIS LONG AND SAMUEL A. MILLER. }

The State of Arkansas to the sheriff of Pulaski County:

You are commanded to attach and safely keep the property of the defendants, Dennis Long and Samuel A. Miller, in your county, not exempt

from execution, or so much thereof as will satisfy the claim of the Little Rock Water Works Company, the plaintiff, in this action for one hundred thousand dollars, and thirty dollars, the costs thereof.

And do you also summon the said Long and Miller, if they be found in your county, to appear before the circuit court on the 1st day of next April term, 1879, at 10 o'clock a. m., to answer the complaint and the premises set forth in plaintiff's affidavit.

You will make due return of this writ, with your proceedings thereon, on the 1st day of next April term, 1879, at 10 o'clock on that day. Herein fail not.

133 Given under my hand and the seal of said court this 26th day of November, A. D. 1878.

[SEAL.] THOS. N. NEWTON, *Clerk.*
By W. W. FIELD, *D. C.*

(Endorsed:)

STATE OF ARKANSAS,
County of Pulaski, ss:

This writ came to my hand at 11 a. m. on the 26th day of November, 1878, and I have executed the same in the county aforesaid on this 26th day of November, 1878, by levying upon and taking possession of the following described personal property of the defendants herein, to wit: Two pump engines, two sets of boilers and all connections, pump-house, well, stand-pipe, section-pipes, one frame house on ground of plaintiff, lot of casting, pipes, valves, &c.; also all main pipe and connections in all the streets of Little Rock owned by defendant. I also delivered a copy of the within writ to the person in charge of said property, and posted a copy also on the property herein mentioned.

M. D. McCABE,
Sheriff.

134 All these exhibits, from one to sixteen, inclusive, filed in open court January 16, 1879.

J. W. CALLAWAY, *Clerk.*
By W. S. EAKIN, *D. C.*

STATE OF ARKANSAS,
County of Pulaski:

I, B. F. Townsend, say that I am the engineer in charge of the machinery of the Little Rock Water Works; the money needed for the expenses of running the works has been furnished up to this time by Dennis Long & Co.; the water is used at the oil mill at the rate, I believe, of about 45 gallons per minute; also generally in livery stables, factories, mills, and, to a large extent, in private families. There are no collections made for the water thus used since the property has been attached. If the collections were made they would more than pay all the expenses of operating the works. Should the running of the works be suspended the pipe would be liable to burst from freezing. When
135 I say that the prices due for water used would more than pay the running expenses, I do not include the price of any water used by the city.

BENJ. F. TOWNSEND.

Sworn to and subscribed before me.
Witness my hand and seal as notary public of said county, this 16th day of January, 1879.
[SEAL.]

J. L. BUY,
Notary Public.

Filed in open court, January 17th, 1879.

J. W. CALLAWAY, *Clerk.*
By W. S. EAKIN, *D. C.*

In Pulaski chancery court.

BARRETT ET AL.
v.
LITTLE ROCK WATER WORKS CO.

I, G. P. C. Runbough, being duly sworn, say that I am a civil engineer, and am acquainted with the construction of water works;
136 that I am fully acquainted with the water-works erected in Little Rock by Demis Long & Co., that at any regular and reasonable rates of toll the receipts on water now used will not pay for operating said works; that during the last summer there were more consumers, and more water consumed than now, but the income was not sufficient to pay over one-half of the running expenses; and I further say that by non uses of said works there is no danger whatever of the pipes bursting if properly constructed according to the contract of Dennis Long & Co. I am secretary of the Little Rock Water Works Company, and have full knowledge of the water used now and last summer, and paid for that used during six weeks last summer, and know that the receipts, including what the city paid, were not half enough to pay the running expenses.

GEO. P. C. RUMBOUGH.

Sworn to and subscribed before me this 17th day of January, 1879.

J. W. CALLAWAY, *Clerk.*
By W. S. EAKIN, *D. C.*

137 Filed in open court, January 17, 1879.

J. W. CALLAW'Y, *Clerk.*
By W. S. EAKIN, *D. C.*

JANUARY 17*th*, 1879.

JOHN G. BARRETT ET AL.
v.
LITTLE ROCK WATER WORKS COMPANY ET AL. } 1031.

Come the plaintiffs, John G. Barrett et al., by U. M. Rose, esq., their solicitor, and by leave of the court file herein the affidavit of B. F. Townsend; and also come the defendant, The Little Rock Water Works Company, by McCure, Kimball, Henderson and Caruth, its solicitors, and by leave of the court files herein the affidavit of Geo. P. C. Rumbough, and this cause is now taken up and is in progress of argument by counsel.

JANUARY 18, 1879.

138 JOHN G. BARRETT ET AL.
v.
LITTLE ROCK WATER WORKS ET ALS. } 1030.

Now, on this day came the plaintiffs, John G. Barrett et al., by U. M. Rose, their solicitor, and by leave of the court file herein their bond for the costs of this suit, and also came the defendant, the Little Rock Water Works Co., by McClure, Kimball, and Henderson and Caruth, its solicitors, and by leave of the court files herein its petition to remove this cause to the United States circuit court for the eastern district of Arkansas, and also, by leave of the court, files its bond for the removal hereof, whereupon the plaintiffs, by U. M. Rose, object to the petition, and this cause is set for argument on the petition for rem'val on Tuesday, January 21st, 1879.

Pulaski chancery court.

BARRETT AND ALEXANDER
v.
LITTLE ROCK WATER WORKS CO.

139 I hold myself bound for costs in this case.

U. M. ROSE.

JANUARY 18, 1879.

Approved.

J. W. CALLAWAY, *Clerk.*
By W. S. EAKIN, *D. C.*

Filed in open court January 18, 1879.

J. W. CALLAWAY, *Clerk.*
By W. S. EAKIN, *D. C.*

In the Pulaski chancery court, State of Arkansas.

JOHN G. BARRETT AND RICHARD B. ALEXANDER
v.
LITTLE ROCK WATER WORKS CO., ET ALS. } No. 1031.

Petition for removal to the circuit court of the United States, eastern district of Arkansas.

To the honorable chancery court of Pulaski County, Arkansas:

140 Your petitioner respectfully shows to this honorable court that the above-entitled cause is a civil suit in equity, and that the amount in dispute in the above-entitled cause exceeds in value and amount, exclusive of costs, the sum of five hundred dollars.

That the controversy in said suit is between citizens of different States, and that the petitioner was at the time of the commencement of said suit, and still is, a citizen of the State of Arkansas, and the only defendant in said suit against whom judgment is asked and relief prayed, the others being nominal parties.

That the plaintiffs, John G. Barrett and Richard B. Alexander, are

now, and were at the commencement of this suit, citizens and residents of the State of Kentucky.

Your petitioner states that in said suit above mentioned there is a controversy which is wholly between citizens of different States, and which can be fully determined as between them, to wit, a contro-
141 versy between the said petitioner and the said Barrett and Alexander, being the parties actually interested in said controversy.

And your petitioner offers herewith a bond, with good and sufficient security, for his entering in the circuit court of the United States aforesaid, on the first day of the next session, a copy of the record in this suit, and for paying all costs that may be awarded by said circuit court, if said court shall hold that the same is wrongfully or improperly removed thereto. And it prays this honorable court to proceed no further herein, except to make the order of removal required by law, and to accept the said bond and surety, and to cause the record herein to be removed unto said circuit court of the United States for the eastern district of Arkansas, and so it will ever pray.

JOHN McCLURE,
E. W. KIMBALL, AND
HENDERSON & CARUTH,
Att'ys for L. R. W. W. Co.

Filed in open court January 18th, 1879.

J. W. CALLAWAY, *Clerk.*
By W. S. EAKIN, *D. C.*

142 Know all men by these present that we, the Little Rock Water Works Co., as principal, and M. Q. Townsend, Eben W. Kimball, Zeb. Ward, as sureties, are held and firmly bound unto John G. Barret and Richard B. Alexander, in the penal sum of two hundred dollars, the payment whereof well and truly to be made unto the said Barrett and Alexander, heirs and assigns, we bind ourselves, our heirs, representatives, and assigns, jointly and severally, and firmly by these presents. Yet, upon these conditions, the Little Rock Water Works Company, having petitioned the chancery court of Pulaski County, State of Arkansas, for the removal of a certain cause therein pending, wherein said Barrett and Alexander are complainants, and said water works company are defendant, to the circuit court of the eastern district of Arkansas.

Now, if said petitioner shall enter into the circuit court of the United States, on the first day after next session, a copy of the record in said suit, and shall well and truly pay all costs that may be awarded
143 by said circuit court of the United States as if said court shall hold that said suit was wrongfully or improperly removed thereto, then this obligation to be void, otherwise to remain in full force and virtue.

LITTLE ROCK WATER WORKS CO.,
By GEO. P. C. RUMBOUGH,
Secretary.

M. Q. TOWNSEND. [SEAL.]
EBEN W. KIMBALL. [SEAL.]
ZEB. WORD. [SEAL.]

Filed in open court January 18, 1879.

J. W. CALLAWAY, *Clerk.*
By W. S. EAKIN, *D. C.*

JANUARY 22*nd*, 1879.

JOHN G. BARRETT ET AL.
v.
LITTLE ROCK WATER WORKS CO. ET AL. } 1031.

Came the parties to this cause, the plaintiffs, John G. Barrett et al., by U. M. Rose, their solicitor, and the defendant, the Little Rock Water Works Company, by McClure, Kimball, and Henderson and
144 Caruth, its solicitors, and this cause, after argument of counsel, is now submitted to the court on the petition of the defendant, to remove this cause to the United States circuit court for the eastern district of Arkansas. And the court being sufficiently advised in the premises doth grant said petition, and it is ordered by the court that this cause be removed to the United States circuit court as prayed in the petition.

Clerk's certificate.

In testimony that the foregoing eighty-three (83) pages contain a true and perfect transcript of the papers and record in the above entitled cause, as the same appears in my office, in the city of Little Rock and State of Arkansas, I, J. W. Callaway, clerk of the Pulaski chancery court, have hereunto set my hand and affixed the seal of said court this 3rd day of February, A. D. 1879.

[SEAL.] J. W. CALLAWAY, *Clerk.*

145 (Endorsed:) Filed February 4, 1879. Ralph L. Goodrich, clerk.

Which motion to remand is as follows:

Come said plaintiffs and file a transcript of the record of the Pulaski chancery court herein, and move to remand this cause to said chancery court, because they say that this court has no jurisdiction of this suit.

U. M. ROSE,
For Plaintiff.

(Endorsed:) Filed Feb'y 4, 1879. Ralph L. Goodrich, clerk.

146 And on February 13, 1879, the following proceedings were had:

Now come the said plaintiffs by U. M. Rose, their attorney, and leave having been granted to the said plaintiffs at a previous day of the term to file the transcript of the record in this cause from the State court, and said transcript having been filed, thereupon the said plaintiffs filed their motion to remand said cause to the State court from whence it came, and the said defendant The Little Rock Water Works Company having had due notice of the filing of said motion and of the time the same would be heard, and the court having heard the argument of counsel for said plaintiff on said motion (the defendant declining to appear to said motion), doth overrule the same, and thereupon leave is granted plaintiffs to strike from their bill the names of Dennis Long & Co., and M. D. McCabe, who are named as defendants therein, and who have not been served with process, and said names are accord-
147 ingly stricken out of said bill. And said plaintiffs by their said attorney, and the defendant by its attorney, John McClure, being now present in open court leave is given said plaintiffs to amend their bill of complaint as they may be advised, and upon said amendment

being filed leave is granted plaintiffs to move upon reasonable notice to the defendant for the appointment of a receiver as prayed in the bill; and the plaintiffs come and file their amendment to bill of complaint.

Which amendment to bill of complaint is as follows:

And the said plaintiffs come, and, by way of amendment to the original bill herein, say that the property conveyed by the said deed of trust in the said original bill mentioned, is not of sufficient value to pay off the debt secured by the said deed of trust; and that the taxes on the said property for the year 1878 are now due and unpaid, and that
148 the said Little Rock Water Works Company has no means with which to pay the same, and does not, as your orators are informed and believe, intend to make any effort to pay the same; and that if some means are not devised for raising money to pay the running expenses of the said water-works, the defendant will forfeit its charter and franchises.

In view of these additional statements of fact your orators would further pray that the court may cause said taxes to be paid, in order to prevent the said property from being sold for the non-payment of the same; and that in case it shall be made to appear that the work of constructing the said water-works has not been completed, the court may cause money to be raised for the purpose of completing the same, and that the court may take such other steps as the evidence may show to be necessary for the preservation of the security of the holders of the said bonds and coupons; and for such other relief as your orators have already prayed in their said original bill.

U. M. ROSE.

149 STATE OF KENTUCKY,
County of Jefferson, ss:

Be it remembered, that on this day came before me, a notary public of said county and State, John G. Barret, to me well known, and, being duly sworn, made oath that the matters set forth in the foregoing amendment are true.

J. G. BARRET.

Sworn to and subscribed before me.

Witness my hand and seal as such notary public on this 29 day of January, 1879.

[SEAL.] J. W. SCHEURER,
Notary Public.

(Endorsed:) Filed February 13, 1879. Ralph L. Goodrich, clerk.

And on February 26, 1879, the following proceedings were had:

Come the complainants by U. M. Rose, their solicitor, and by leave of the court file herein their second amendment to the bill of complaint.

150 Which amendment to bill is as follows:

Come the said plaintiffs, and by leave of the court amend their original bill herein, by saying that prior to the construction of the said water works, the defendant company had entered into a contract with the city of Little Rock, a municipal corporation created by the laws of the State of Arkansas, by which contract the said company agreed to construct the said works in a particular manner, and the said city agreed to take a certain quantity of the water to be supplied by said company, at a price agreed upon between them, which contract is in writing, and is in the possession of the said company. That, in order to secure the perform-

ance of the said contract on the part of said company, the said city required the said company to deposit the sum of twenty-five hundred dollars with the Merchants' National Bank of said city, a bank organized under the national banking laws of the United States, and doing
151 business in said city of Little Rock, where its principal office and place of business is located, which sum by said agreement was to be forfeited in case said company should not perform its said contract regarding the erection of the said water works in the manner prescribed by the said agreement, which sum is yet in the possession of the said bank.

Your orators are advised that the said company did in all things comply with its said agreement; but that the said city claims that it violated its contract, and that by reason thereof the said deposit has been forfeited to the said city; and that said city is about to take legal steps to enforce said forfeiture.

Your orator says that the said company is insolvent, and that the said sum thus deposited is by law applicable to the payment of its debts; and that if prompt action is not taken the same will be withdrawn from the custody of said bank, and that it will be impossible to reach it by any legal process.

152 Wherefore your orators pray that the said Merchants' National Bank and the city of Little Rock may be required to appear herein, and to produce a copy of said agreement; that they may be made defendants to this suit, and that the said bank may be decreed to pay said sum to your orators, and that they may have such further and other relief as they have already prayed; and for process of subpœna against the said Merchants' National Bank of the city of Little Rock, and against the said city of Little Rock.

U. M. ROSE,
For Plaintiff.

(Endorsed:) Filed February 26, 1879. Ralph L. Goodrich, clerk.

And on March 1, 1879, the following proceedings were had:

Now on this day come the plaintiffs, by U. M. Rose, their solicit-
153 or, and also came said Little Rock Water Works Company, by McClure, Kimball, and Henderson and Caruth, their solicitors, and the motion for the appointment of a receiver herein, is now submitted to the court, and the court being duly advised in the premises, it is now ordered, by consent of parties, that Charles S. Williams be, and he is appointed receiver herein, who is directed to qualify as such, by taking an oath to well and truly and faithfully discharge his duties as such according to law, and the orders and direction of the court, and by giving bond in the sum of five thousand dollars, conditioned for the faithful performance of his duties as such receiver, according to law and the orders and directions of the court.

Upon such qualifications said Little Rock Water Works Company shall cause the property in the bill of complaint herein mentioned to be delivered into the custody of such receiver, and the said receiver shall at once take charge of the same, and shall operate said works with
154 as little expense as may be, and to the best advantage, and shall proceed to collect all sums due said company for water supplied heretofore or hereafter, and shall hold the same subject to the further order of this court; and said receiver shall charge and collect for water thus supplied at the following rates:

For rates, see page 87.

155 UNITED STATES OF AMERICA,
Eastern District of Arkansas:

Be it remembered that, at a circuit court of the United States of America in and for the eastern district of Arkansas, begun and holden on Monday, the 14th day of April, anno Domini one thousand eight hundred and seventy-nine, at the United States court room in the city of Little Rock, Arkansas, the honorable Henry C. Caldwell, district judge, presiding and holding said court, the following proceedings were had, to wit, on May 5, 1879:

Comes the Little Rock Water Works Company, by John McClure, E. W. Kimball, and Henderson & Caruth, its solicitors, and files herein its answer and cross-bill, and also motion to file certain papers.

Which answer and cross bill are as follows:

The answer of the Little Rock Water-Works Company, one of the
156 defendants, to the original and amended bills of complaint filed herein, and cross-bill, as between the defendant and the city of Little Rock.

This defendant, now and at all times hereinafter, saving and reserving unto itself all benefit and advantage of exception which can or may be had, or taken, to the many errors, uncertainties, and other imperfections in said complainant's bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as defendant is advised is or are material or necessary for *time* to make answer unto, this defendant, answering, saith:

That heretofore, to wit, under the provisions of an act of the general assembly of the State of Arkansas, entitled "An act to be entitled an act for the incorporation, organization and government of municipal corporations," approved March 9th, 1875, the city of Little Rock, Arkansas, being a municipal corporation, deriving its powers from
157 said act, was, among other things, by the fourteenth section thereof, empowered to provide a supply of water by the construction and regulation of wells, pumps, cisterns, reservoirs, or water works, and as a means of providing said city with water, the mayor and council thereof were authorized and empowered to contract with any person or company to construct and operate the same, and as an inducement thereto, the said mayor and council were authorized and empowered to grant to such person or company with whom any such contract should be made, for such time as might be agreed upon, the exclusive use and privilege of using the streets and alleys of said city for such purpose or purposes.

That in the exercise and execution of the powers herein referred to, the mayor and city council aforesaid, of the city of Little Rock aforesaid, by an ordinance duly passed on the 23rd day of November, 1877, and under a contract in pursuance of said ordinance made by and between the city of Little Rock and this defendant, a copy of which said ordinance is herein referred to as Exhibit No. 1 in the response here-
158 tofore filed, and asked to be made a part hereof, it was authorized and empowered to construct a system of water works, wells, cisterns, reservoirs, &c., for said city, and granted for a period of twenty five years, the exclusive use of the streets and alleys of said city, and the further privilege of furnishing and supplying said city and its inhabitants for the period aforesaid, upon the terms and conditions in said ordinance set forth.

That for the purpose of completing and constructing said water works,

cisterns, reservoirs, &c., for the purpose aforesaid, in the manner and within the time in said contract and ordinance mentioned, this defendant entered into a contract with Dennis Long & Co., of the city of Louisville, Kentucky, who are manufacturers of much of the material, machinery, pipes, &c., used in the construction of such works, on the 24th day of November, 1877, wherein and whereby the said Dennis Long & Co., on or before the 1st day of October, 1878, undertook to construct, and agreed to build for this defendant, at their own cost, and under their own supervision and management, furnishing all the material, labor, pipes, machinery, &c., necessary to complete the same, in a work-
159 manlike manner, such as water works, pumps, engines, reservoirs, &c., to the acceptance of the city of Little Rock, by its city council, as this defendant was, by its said contract with said city of Little Rock, bound to erect and maintain, and that express mention and reference was made in the contract between Dennis Long & Co. and this defendant, to the ordinance of November 23rd, 1877, by way of description, and as fixing the standard, character, kind, capacity, nature and tests to be applied to said water works, to be erected and constructed by said Dennis Long & Co. for this defendant; all of which will more fully appear by reference to a copy of said contract attached to the response heretofore filed herein, marked Exhibit No. 2, between said Dennis Long & Co., and this defendant.

That for the purpose of enabling this defendant to comply with said contract with Dennis Long & Co., in the making of the payment, in bonds, at the time and in the manner in said contract mentioned and set forth, this defendant executed bonds of the denomina-
160 tion of $1,000 each, payable twenty-five years after the date thereof, with interest payable semi-annually, at the rate of eight per cent. per annum, at the Bank of America, in the city of New York, on the first days of January and July in each and every year.

That for the purpose of securing the payment of said bonds, and the interest thereon, and the creation of a sinking fund, for the payment and redemption of said bonds, at the time and in the manner in said bonds mentioned and set forth, this defendant, on the 1st day of January, 1878, conveyed to the complainants herein, by descriptive words, a water works, together with its lands, reservoirs, machinery, pipes, properties, rights, liberties, privileges and franchises, and all tolls, incomes, rents, issues and profits then held, and all which might thereafter be acquired by this defendant.

That by the further terms of said conveyance, Edmond Urquhart was appointed a sinking fund commissioner, and by an irrevocable power authorized to receive and collect all such amounts as might from time to time become due from the city of Little Rock to this de-
161 fendant, and apply the same as therein stated. That Exhibit A attached and referred to in the complaint herein is a substantial, if not a literal copy of said conveyance, and the same is referred to, and asked to be made and treated as a part of this answer.

That under the contract between Dennis Long & Co., and this defendant, all of the bonds secured by said conveyance, to the complainants herein, were to be delivered to Dennis Long & Co. That at the time of the execution and delivery of the bonds in said complaint mentioned and set forth, this defendant was not, as the complainants and the said Dennis Long & Co. well knew, possessed of any water-works; but had only, as is declared in said conveyance, entered upon the construction of a water-works, and said conveyance by its own terms, by said complainants, by said Dennis Long & Co. and by this defendant, was under-

stood to convey, and only intended to convey, the water-works which Dennis Long & Co. had contracted with this defendant to erect and
162 build, and was only to become operative thereon after the said Dennis Long & Co. had completed the same in accordance with his said contract, to the satisfaction and acceptance of the city council of the city of Little Rock and this defendant, and not before. That since the execution and delivery of said conveyance and bonds, this defendant has not acquired any water works from the said Dennis Long & Co. or from any other source, does not, now, and never possessed or owned a water works of any nature, character, or description. That at the time of the execution of said conveyance, as the complainants and Dennis Long & Co. well knew, the only lands or real property owned or pretended to be owned by this defendant is and was a tract or parcel of land one hundred feet front, of block No. 355, in the city of Little Rock, commencing two hundred feet east of the center of Ringo street, being the west half of the east half of said block No. 355. That since the execution of said deed of trust, this defendant has not acquired and
163 does not possess, hold, own, enjoy, or control any other interest in land or real property than is herein mentioned and set forth.

That at the time of the execution of said deed of trust, this defendant was not, as the complainants and Dennis Long & Co. well knew, possessed of any reservoirs, machinery, pipes, or personal property or properties, but had only entered upon the construction of a water works, which necessitated the use and purchase of said articles and material; and said coveyance, by its own terms, notified all parties dealing with and about the bonds, the payment of which was secured thereby, that said property, reservoirs, pipes, machinery, &c., was not then in esse as the property of said water works company, but was to become operative, and operate as a conveyance of such reservoirs, pipes, machinery, property or properties, as this defendant might thereafter acquire; that the complainants herein and Dennis Long & Co. and this defendant so understood said conveyance, and that the same was only intended to convey such reservoirs, machinery, pipes, property, and properties as
164 the said Dennis Long & Co. should make, create, and use in the execution and performance of their said contract with this defendant, and become operative thereon only and after this defendant had paid the said Dennis Long & Co. therefor, and after the same had been accepted by the city council of the city of Little Rock and this defendant. That since the making of said conveyance, the said city council of the city of Little Rock nor this defendant have accepted said reservoirs, machinery, pipes, properties, &c., from the said Dennis Long & Co., or acquired from any other person or persons any reservoirs, machinery, pipes, or property upon which said conveyance might or could become operative; and defendant states that it does not now, and has not at any time since the execution of said conveyance or before, been in the possession, enjoyment, or control of any reservoirs, machinery, pipes, properties, &c., of any nature, character, kind, or description, save and except the real property hereinbefore mentioned.

That at the time of the execution of said conveyance, this de-
165 fendant, as the complainants and Dennis Long & Co. well knew, was not possessed of any "rights, liberties, privileges, and franchises," save such as were dependent and contingent the prompt and faithful performance of stipulations and conditions contained in the ordinance of the city council of the city of Little Rock of November 23rd, 1877. That among other stipulations and conditions therein contained, upon which the "rights, liberties, privileges, and franchises" in said

conveyance mentioned were to become subject to and pass by said conveyance was, that said water works were to be completed as therein specified by the 1st day of October, 1878; that in default of such completion at the time therein stated this defendant was to forfeit $2,500.00, which had been deposited by it as an earnest, and also, all the rights, grants, franchises and privileges by said ordinance granted, as will more fully appear by reference to the 18th section thereof.

That said ordinance is referred to in the conveyance to the
166 complainants, as showing the extent and power of its authority to convey, and furnishes record notice to all parties dealing with and about the bonds secured thereby, that the "rights, liberties, privileges, and franchises" in said conveyance mentioned were merely contingent and dependent upon the due and prompt execution of said ordidance by this defendant, and that said conveyance was only to become operative thereon from and after such performance, and after said city council of said city of Little Rock had accepted the same.

That Dennis Long & Co. undertook and contracted to perform all and singular the requirements of said ordinance, so far as any matter or thing to be done by this defendant was concerned, and has wholly failed in the performance thereof, whereby, and by reason of which failure, the "rights, liberties, privileges and franchises" mentioned and intended to be conveyed by said conveyance have become forfeit and are not now in esse.

That defendant is informed and believes, and so charges the
167 truth to be, that the trustee in whose hands the $2,500.00 forfeit was placed by defendant, has been directed by the mayor of said city, as in said ordinance stipulated may be done, to pay said money into the city treasury, upon the grounds and for the reason that said water works have not been completed.

That at the time of the execution of said conveyance, to the complainants herein, they well knew, and Dennis Long & Co. well knew herein, that this defendant was not possessed of any "tolls, incomes, rents, and profits" of any water works, but said conveyance, by its own terms, notified all persons dealing with and about said bonds secured thereby that the "tolls, incomes, rents, and profits," which were to pass by said conveyance, were only such "tolls, incomes, rents, and profits" as might arise and inure to and for the use and benefit of this defendant, when it should have performed or caused to be performed those matters and things which were enjoined upon it by the terms of the ordinance
168 of November 23rd, 1877, which said ordinance is referred to in said conveyance, and furnishes record notice to all parties dealing with said bonds secured by said conveyance of the nature, extent, and contingencies upon which the right of this defendant to receive "tolls, rents, incomes and profits" were made dependent. That the complainants and Dennis Long & Co. and this defendant understood and knew, that said conveyance was only intended to pass such "rents, tolls, incomes, and profits" as might arise and inure to the use and benefit of this defendant from the use and enjoyment of said water works after the same had been fully completed by Dennis Long & Co. to the satisfaction and acceptance of the city council of the city of Little Rock. That by reason of the failure of the said Dennis Long & Co. to execute and perform their said contract with this defendant, at the time and in the manner therein specified, this defendant hath not been in the enjoyment or receipt of any "tolls, incomes, rents, or profits," or entitled thereto unless it be from the city of Little Rock, for hydrants,
169 under the 6th section of the ordinance of November 23rd, 1877.

That by the terms of said conveyance to the complainants all such sums as might from time to time become due to this defendant from the city of Little Rock was, under an irrevocable assignment, transferred and set over to Edmond Urquhart, with full power to collect and receipt for the same, and in his hands to constitute a fund for the payment of the principal and interest of said bonds in said deed of conveyance mentioned, and for the further purpose, after the year 1880, of creating a sinking fund for the payment of said bonds.

That if there be anything due from said city of Little Rock, under the terms and conditions of said 6th section of the ordinance of November 23, 1877, to the defendant herein, that said sum at the present time amounts to about $4,000 *dollars;* which said sum is fully sufficient to pay the m tured coupons attached to said bonds, which this defendant is in any manner bound to pay, as the said Dennis Long &
170 Co., as will more fully appear by Exhibit No. 3, attached to the response hereinbefore filed and made a part hereof, undertook and agreed to return certain coupons attached to said bonds fully cancelled.

That it is expressly provided in the conveyance to the complainants, that if default shall be made in the payment of any one or more of the installments of interest as the same becomes due, by reason of the city of Little Rock failing to pay at the times and in the manner in said ordinance of November 23d, 1877, for the hydrants which said city of Little Rock contracted to take and use, that a default thus occasioned should estop the complainants and the holders of said bonds from taking possession of the property in said deed of conveyance mentioned, or from having a receiver appointed to take charge of said water works, or having said property in said conveyance mentioned sold, under a decree of foreclosure or otherwise, during the continuance of each default.

That the city of Little Rock hath refused and made default in
171 making the payments which, by the 6th section of said ordinance of November 23, 1877, it contracted to do, and by reason of this default the defendant has been and is unable to make the semi-annual payment of interest for which a foreclosure is prayed by the complainant herein, and defendant says that by reason of the default of the said city of Little Rock, as aforesaid, the complainants are estopped from maintaining this suit, until such time as it is made to appear that the payment of the semi annual installments of interest did not arise from the default of the city of Little Rock to comply with the provisions of the ordinance of November 23d, 1877, in regard to paying for the use of hydrants.

That for the purpose of enabling the said Dennis Long & Co. to execute and perform their said contract with this defendant, the said Dennis Long & Co. were by the defendant permitted and allowed to enter upon the tract or parcel of land hereinbefore mentioned and described in said conveyance and certain of the streets and alleys of said
172 city.

That in an attempted and pretended performance of said contract, by the said Dennis Long & Co. with this defendant, they, the said Dennis Long & Co., did bring to the city of Little Rock a considerable quantity of water pipes of various sizes, pumps, engines, and other articles and material of the character generally used in the building of such water works as this defendant contracted to build in accordance with the ordinance of November 23, 1877. But defendant states that none of said property, pipes, engines, pumps, machinery, &c., so brought to the said city of Little Rock, as aforesaid, was ever, at any time, delivered into the care, custody, control, or management of defendant, or accepted

by the city council of the city of Little Rock, or this defendant; on the contrary, defendant avers that the said pipes, pumps, engines, machinery, &c., so brought as aforesaid, by the said Dennis Long & Co., to be used, and pretended to be used, in the construction of said water-
works, has at all times been under the absolute care, custody,
173 control, ownership, and management of Dennis Long & Co., and their agents, until the date hereinafter mentioned. That the said Dennis Long & Co. have at all times considered said pipes, pumps, machinery, engines, &c., so by them brought to the city of Little Rock, as aforesaid, and said water works, as built and constructed by them, as their own property, and not the property of this defendant, all of which will more fully appear by certain exhibits attached to the response heretofore filed herein and made a part hereof, marked No. 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 & 15, and have refused to turn the same over to this defendant unless the defendant would accept and pay for the same, without any showing upon the part of said water works and the said Dennis Long & Co. that said works possessed the capacity required by the ordinance of November 23rd, 1877, and the contract between Dennis Long & Co. and this defendant, or capable of bearing and performing the tests in said ordinance required, or that the material furnished was
of the character and description in said contract mentioned;
174 or that the same was in other respe'ts completed in accordance with said contract and ordinance of November 23, 1877.

That the said Dennis Long & Co. having failed and neglected to complete said works in accordance with their said contract, thus depriving the defendant of large revenues, rents, tolls, incomes, and profits, and je'pardizing valuable rights, privileges, and franchises, and in otherwise damnifying the defendant, it brought an action in the circuit court for Pulaski County, Arkansas, against the said Dennis Long & Co., to recover damages for the failure and neglect aforesaid, and caused the engines, pumps, machinery, pipes, property, material, &c., of the said Dennis Long & Co., to be attached by the sheriff of Pulaski County, Arkansas, as will more fully appear by Exhibit "B" attached to the complaint herein, and a copy of said order of attachment in said cause issued is attached to the response hereinbefore filed and made a part hereof.

175 Defendant denies that the order of attachment issued out of the circuit court of Pulaski County aforesaid was levied upon the property of this defendant, or any portion of the property of this defendant, and avers that said order of attachment, long before the commencement of this suit, to wit, on the 26th day of November, 1878, so issued and levied as aforesaid, was levied on the sole property of Dennis Long & Co., and not upon the property of this defendant as in said complaint is alleged, and defendant submits that if the property aforesaid so by the sheriff of Pulaski County seized on the attachment as aforesaid, in the action in the Pulaski circuit court aforesaid, is or was conveyed or passed by the conveyance to the complainants herein, that the complainants herein and the receiver herein must establish their right thereto before the Pulaski circuit court, and denies the right of this court and its jurisdiction to try the right of property in the goods and chattels so seized as between this defendant and Dennis Long & Co.

176 That defendant has paid to the said Dennis Long & Co. $15,000 in money, and delivered to them seventy bonds of the denomination of $1,000 each, in part payment for work and labor and material furnished and used in and for the construction of said water works.

That it is advised and believes and so charges the truth to be, that all of the bonds so delivered to Dennis Long & Co. as aforesaid, are yet the property of Dennis Long & Co., under their control and subject to their orders.

That defendant is advised and believes and so charges the truth to be, that the complainants instituted this suit and proceeding at the sole instance and request of the said Dennis Long & Co., their agents, and attorneys, and at the request of no other persons, with a view of ultimately obtaining an order from this honorable court, under the pretense of protecting and preserving said property and keeping the same in repair through the instrumentality of a receiver, whereby they,
177 the said Dennis Long & Co., expected to make advances in money to said receiver for deficits in the operation of said works and the pretended repair thereof, and making such advances a charge upon such works, superior to that which this defendant acquired by its attachment of said property as aforesaid, and that in truth and fact the said Dennis Long & Co., through the subserv'ency and instrumentality of the said trustees named in said deed, the complainants herein are attempting to use this form of proceeding and the power of the court to encumber and charge the property hereinbefore described in such manner and to such extent as to deprive this defendant of the profits of any judgment which this defendant may obtain against the said Dennis Long & Co., in the Pulaski circuit court.

Defendant submits that it would not only be inequitable, but unjust to allow the said Dennis Long & Co. to thus use the trustee and complainants herein and abuse the high power of the court or to
178 allow the same to be so used as to aid the said Dennis Long & Co. in perpetrating further outrage upon this defendant, whose confidence they have abused and betrayed, whose money and securities they have received and returned no equivalent therefor, and whom they now taunt at a distance beyond the jurisdiction of this court.

Defendant states that the said Dennis Long & Co. have failed in many particulars to fulfil and perform their said contract to and with the said defendant.

First. They have not furnished nor completed said water works nor put the same in successful operation on or before the 1st of October, 1878; nor have they at any other, either before or since that date, put them, said works, in operation, or shown that said works were capable of making and standing the tests required by said contract.

Second. They have not completed said water works to the satisfaction and acceptance of the city council of the city of Little Rock or
179 to the satisfaction and acceptance of the defendant.

Third. They have not provided machinery, apparatus, or means to filter the water to be used for domestic purposes, as by said contract they are required to do.

Fourth. They have not made or constructed a proper stand-pipe, and the pretended stand-pipe furnished by them now leaks badly, and has ever since its erection, is uncovered and unfit for use, and is not such a stand-pipe as is required by the contract hereinbefore referred to.

Fifth. They have not laid the water pipes or mains thirty inches under ground and grade of streets, as by their said contract they are required to do, but have left the same upon the surface of the earth, and in places wholly unprotected or covered in any manner.

Sixth. They have not placed the proper and requisite number of valves of the main section pipes, and have left such as are used out of
180 water, so that a sufficient supply of water cannot be had.

Seventh. The pipes or mains laid in the city are not done in a workmanlike or substantial manner, being badly laid; the joints being made of poor material, and in an unartistic manner, are not of sufficient strength to bear the test provided by said contract.

Eighth. They have not erected a pump house as in said contract required.

Ninth. They have not built a well, as by said contract required. That the well built is unprotected, unsafe, and liable at any to be destroyed by the drift of the Arkansas River, and is not in accordance with the requirements of said contract.

Tenth. They have not put in forty-three stop valves, as by said contract they are required to do; nor have they pointed out or indicated the location of any such valves.

Eleventh. That the iron used in the pipes and mains is not of
181 the grade and character required by their said contract, but is of a weak and inferior character, and incapable of bearing the test required by said contract.

Twelfth. They have neither tried or tested the said water works, or in any manner shown, or proffered to show, that said water works are capable of performing the tests required by said contract, but have at all times declined and neglected to do so.

Thirteenth. They have not made or constructed *or* a well in which the water does not rise and fall with the rise and fall of the Arkansas River, as by their said contract they are required to do, but the well made by them rises and falls with the Arkansas River, and is supplied with water from said river by an opening cut from said well to said river.

Fourteenth. That in other respects said Dennis Long & Co. have failed and neglected to comply with their said contract.

Defendant is informed and believes, and so charges the truth to be, that Dennis Long & Co. are the legal and equitable owners of all
182 the bonds and coupons delivered by the defendant to said firm, and of the coupons and bonds now in suit.

That it would be inequitable and unjust to compel the defendant to pay the amount of said coupons and bonds to the said Dennis Long & Co., or to the plaintiffs herein, for the use of Dennis Long & Co., when in truth and fact the said Dennis Long & Co. are, by reason of the neglects and breaches of contract aforesaid, largely indebted to the defendant.

Defendant states that it is not true, as in said complaint alleged, that the bondholders of this defendant are numerous. That by the express terms of said deed of trust, the power of said trustees are dependent upon an application in writing of a majority in amount of said bondholders, to pray a foreclosure of said mortgage, or exercise certain other powers therein specifically enumerated. That if such application, in writing, has been made to said trustees, the complainants herein, they are
183 advised and are in possession of the names of the pretended owners of said bonds of this defendant and the coupons thereto belonging.

Defendant denies that any of the bonds so issued by it as aforesaid are now or were ever held by person or persons recognized by law as bona fide holders.

The defendant states that the privilege and right of furnishing water to the city of Little Rock and its inhabitants, under the contract hereinbefore referred to, is a valuable grant, franchise, and privilege, and one in which the complainants and the holders of said bonds, so issued as aforesaid, are as much interested as is the defendant in its preservation.

Defendant states that the time within which said water works were to have been completed has long since passed, and by the strict letter of the contract in relation thereto, a forfeiture of all rights and privileges and franchises thereunder hath accrued in favor of the city of Little Rock.

184 Defendant states that the work was and is of great public necessity to the city of Little Rock and its inhabitants. Not only to these, but is one in which the defendant and Dennis Long & Co. have invested a large amount of money.

That all of the defects and the neglects which have heretofore occurred in the performance and execution of said contract, save as to the time fixed for the completion thereof, are things which can yet be remedied, if time is not the essence of said contract.

Defendant states that it would be to the interest of the bondholders, as well as that of the defendant, to have said water works in all respects completed according to contract and save the valuable grant to the defendant, or to such other persons as may acquire such rights thereto as defendant now possesses.

That the city of Little Rock, by its authorized agents and authorities, threatened to forfeit $2,500 earnest money deposited with
185 it, and the rights, privileges, and franchises granted by the contract and ordinance hereinbefore referred to, and hath been restrained from further action in regard thereto and made a parties defendant to this suit.

Defendant is of opinion that time was not the essence of said contract, although the city of Little Rock, one of the defendants herein, insists it was.

Defendant therefore prays that this answer may, as to the city of Little Rock, be taken, considered, and treated as a cross-bill, and that it be required to answer the matters and things therein set forth, in relation to the forfeiture aforesaid. That if upon a hearing of said matter the court shall be of opinion that time was not the essence of said contract, and that a forfeiture of said rights, privileges, and franchises in said contract and ordinance hath not accrued to and in favor of said city of Little Rock, then defendant prays that this honorable court may direct the receiver herein or some other competent person or persons to
186 examine the water works aforesaid and report to this honorable court wherein the said Dennis Long & Co. or this defendant hath neglected and failed to build and erect a water works in accordance with the contract and ordinance hereinbefore referred to, and the probable expense of making the same in compliance with said contract. That upon said report being made, if not unreasonable and unjust, that this honorable court authorize and direct the receiver herein to have such necessary repairs to be made, and the costs thereof charged against said work, and made a lien and charge thereon, payable before the coupons or the bonds from which they may have been detached.

That if it should hereafter be made to appear that Dennis Long & Co. are beneficiaries under the terms and conditions recited in said deed of trust, or entitled to receive any sum or sums under a decree rendered herein from the complainants, defendant prays that so
187 much of said fund as may be found to be due to the said Dennis Long & Co., or any member of the firm, may be directed to be paid in to the register of this court, to abide its further order, instead of the complainants herein, who are non-residents of this State, and beyond the jurisdiction of this court, as the said Dennis Long & Co.

That, if the cost and completion of said water works cannot be declared a lien superior to that of the bond and coupon holders, that whatever fund may be found in which the said Dennis Long & Co. may be found to be beneficiaries, may, under the order of this court, be applied to the payment of such expense.

That an accounting may be had and taken between the defendant and the city of Little Rock, with a view of ascertaining what amount, if any, is due defendant from said city for water and the use of hydrants; that for whatever sum may be found due, the complainants have judgment therefor against said city, and the defendant have coupons re-
188 turned to it for the amount thereof.

That the complainants, within thirty days, so far as is known to them, furnish to the defendant a list containing the names and residence of the bond and coupon holders of the defendant, and the amount held by each; and defendant prays such other and further relief as to the court may seem meet.

McCLURE, KIMBALL, AND
HENDERSON & CARUTH,
For Little Rock Water-Works Co.

(Endorsed:) Filed May 5, 1879. Ralph L. Goodrich, clerk.

Which motion is as follows:

Now comes the defendant, the Little Rock Water-Works Company, and moves the court to compel the complainants to file in this
189 court, or with some other person designated by said court, for the purpose of inspection, the original request or requests made to complainants in writing by a majority, in amount, of the bondholders of this defendant, requesting said John G. Barrett and Rich'd B. Alexander, the complainants, to institute this suit, or authorizing its commencement.

LITTLE ROCK WATER WORKS CO.,
By JOHN McCLURE,
EBEN W. KIMBALL, AND
HENDERSON & CARUTH,
Its Attorneys.

(Endorsed:) Filed May 5, 1879. Ralph L. Goodrich, clerk.

And on May 8, 1879, the following proceedings were had:

This day came the plaintiffs, by N. M. Rose, their solicitor, and by leave of the court file herein their replication to the answer of the Little Rock Water Works Company, on file herein.
190 Which replication is as follows:

Come the said plaintiffs, and for replication say that they will maintain and prove their said bill to be true and sufficient in law, and that the answer of the defendant, the Little Rock Water Works Company, is neither true in fact nor sufficient in law, when and where the court may direct.

U. M. ROSE, *Sol.*

(Endorsed:) Filed May 8, 1879. Ralph L. Goodrich, clerk.

And on May 10th the following proceedings were had:

On this day came plaintiffs by U. M. Rose, their solicitor, and came the defendants by John McClure, their solicitor, and the motion
191 made by defendant, the Water Works Company, herein to have the plaintiffs produce here the written requests of the bondhold-

ers to the plaintiffs to bring this suit, is now submitted to the court, and being duly considered, the same is by the court overruled.

And on May 26, 1879, the following proceedings were had:

On this day came the plaintiffs by U. M. Rose, their solicitor, and by leave of court they file here their third amendment to the original bill herein, and the demurrer of the city of Little Rock herein being now considered with reference to the bill as thus amended, and the court being now sufficiently advised in the premises, it is now considered that said demurrer be, and the same is, overruled, and it is ordered that said city answer said original bill within ten days from this date.

192 Which amendment is as follows:

Your orators, the plaintiffs, by leave of the court, amend their original bill herein by setting forth the following facts:

That by an ordinance of the city of Little Rock, passed on the 23rd day of November, 1877, it was ordained that for the purpose of securing a supply of wholesome and filtered water for public and private purposes, there was thereby granted to the defendant water company the privilege of laying water mains and pipes in and under all streets, alleys, and public places in said city for the term of 25 years after the taking effect of said ordinance and the acceptance thereof; that said mains and pipes should be so laid that there should be 2 feet and 6 inches between the top thereof and the grade line of streets as might then or thereafter be established by the city.

That within ten months of the acceptance of said ordinance
193 the said company should have its water works, upon the direct pressure system, comprising two engines, with separate boilers, and pumping apparatus attached to each, each of said boilers to have separate engines attached for the purpose of supplying said boilers with water, and each having a pumping capacity, when the piston is travelling not over 150 feet per minute, to furnish 750,000 gallons of water each and every day, six miles of mains, 75 double hydrants, at 85 dollars each per annum for ten years, and any additional number at 75 dollars per annum, and the requisite stop-valves and other appendages in full operation, said works to cost not less than $93,000.

That said hydrants should be placed in such positions along the lines of mains as the city council should direct, and that said works should be capable of throwing 8 streams of water at one time, each through 500 feet of hose, and through nozzles one and one-half inch in diameter,
194 to the height of 100 feet at any place in the city of grade not higher that Main street where intersected by Markham street, and should be capable of throwing three streams of water at one time through 5,000 feet of hose, and nozzles one and one-quarter inch in diameter, 60 feet in height at any other location on the line of said mains, said mains to be of the following dimensions: 200 feet to be 14 inches in diameter, 1,200 feet to be 12 inches in diameter, 5,280 feet to be 10 inches in diameter, 19,720 feet to be 6 inches in diameter, the same to be laid in such streets as the company might direct, subject to the approval of the council of the city.

That the machinery provided by the company should be capable of complying with the requirements of said ordinance at all times in time of fire over and above the ordinary water supply; and that the company should be bound to change the location of any of the hydrants contemplated by said ordinance as the council might direct at the reasonable cost of the city.

That upon laying or repairing the said mains and pipes the company should restore the streets and alleys of the city to as good a condition as they were prior to the said work.

That in consideration of the use of the water and the hydrants aforesaid for the purpose of extinguishing fires, and the use of water to be used in and about all city buildings, and water to fill the cisterns of the city, the city would pay to the company 85 dollars per annum for the next ten years, payable quarter yearly for each of said 75 hydrants, and 75 dollars per annum, payable quarterly, for each of said hydrants after ten years, which payments should commence pro rata as soon as ten hydrants could be erected and ready for use, and so on as each additional hydrant should be ready for use; and that after 75 hydrants should be ready for use the said quarterly payments should be made by the city on the first day of January, April, July and October of each year, to be paid out of the tax raised and levied for general purposes.

That the said ordinance also fixed the rates which should be charged by the company to private consumers.

That the company should, within 60 days after the acceptance of said ordinance, commence said works, and should vigorously prosecute them until completed; and should deposit in the hands of the city treasurer $2,500 on condition that if the works should be completed according to the requirements of said ordinance then said money should be paid over to the company; but that if the company should fail to commence the works within the time required, or, having commenced, should fail to complete them within the time specified in said ordinance, then the said money should be forfeited to the city, and should be turned into the treasury of the city by said treasurer, upon notice given him by the mayor of the city that the company had failed to comply with its contract, and upon a failure to complete said works in the time specified in said ordinance then the said company should forfeit all the rights, grants, franchises and privileges granted therein, and that the contract evidenced thereby should cease to have any force or effect.

That the water to supply the city for fire purposes should be taken from the Arkansas River, near or at the foot of Ringo street, direct from the river, and water for domestic purposes should be taken from a well not less than 25 feet in diameter, which should be located at such place that the mouth thereof should be above high-water mark, and the water therein should not rise and fall with the rise and fall of the Arkansas River, or be subject in any way to the flowage therein of surface water. That the said well should be at all times subject to the view and inspection of any committee of the council appointed for that purpose, and that if the condition of the water therein should be disapproved or condemned by a majority of said committee, and their reasonable objection thereto be not removed within two weeks after the company should be notified of the same, it should be lawful for the city to have proper repairs made therein at the expense of the company.

That the company should at all times maintain a maximum pressure of 30 pounds to the square inch in the mains in the elevated portions of the city.

All of which matters will be more fully seen by reference to a copy of said ordinance, filed in this suit as Exhibit 1 to the "response" herein filed by the said company.

Your orators say that the said works were completed by the said company in all respects in accordance with the terms of said ordinance, which was accepted by the said company on the day it was passed; that the said company had the work contracted for by said ordinance

done by a contractor or contractors, under some kind of an agreement, and that the company now asserts untruly that the said works
199 were not completed within the time and in the manner required by said ordinance, and, being insolvent, conspires with the said city to reject the said works as not being in accordance with the terms of the agreement between it and the city, and refuses to take any action against the city for the enforcement of its rights in the premises; that the city has lately by an ordinance passed by the council thereof declared the said deposit (which by a subsequent agreement was placed in the hands of the defendant, the Merchants' National Bank, instead of the treasurer of the city, and still remains there), together with all the rights, grants, franchises, and privileges granted by said ordinance, to be forfeited, and now claims that the said company has no right or franchise in the premises; that this claim of the city is collusively acquiesced in by the said company for the purpose of depreciating the value of the said works, so that the bonds issued for the purpose of building them may
200 be rendered of but little value, in order that they may be bought up at low prices, with a view to obtaining some other contract with the city at some later period; that the rights thus sought to be divested are extremely valuable, as the city is the largest consumer of water supplied by said works, and the money accruing to the company under said ordinance, if faithfully carried out, would exceed in amount all its other income; that the present holders of said bonds advanced money to buy the same, with which money the said works were constructed, relying on the grants and concessions made in said ordinance as securing the payment of the principal and interest of said bonds; that the company is hopelessly insolvent, and absolutely refuses to enforce its rights of any kind against the city; and that by reason of its non action, your orators are in great danger of loosing their most valuable security for the payment of said bonds and interest, and that
201 your orators and the said bondholders whom they represent cannot sue the said company at law.

Your orators also submit that if, upon an examination of the said works, it shall be found that they are not completed with strict conformity with the requirements of said ordinance, the said bondholders should have the right to have the defects complained of remedied for their own protection, to which end they should be permitted to waive the priority of their lien for any needed repairs or additions that may be needed to make said works come up to the required standard.

Your orators pray that the said city may be required to set forth in what respect the said works fail to fill the requirements of said ordinance, and that it may be required to answer this amendment according to the practice of this court, and that a decree may be rendered against the city, compelling her to accept the said works, and to comply with the terms of her said contract; that an account may be taken of
202 the amount due by the city to the said company, and that the city may be compelled to pay the same into court, and that in the end the money thus paid may be applied in payment of any deficiency that may be found to exist in the security which your orators hold for the payment of the said bonds and interest, and for all other proper relief.

U. M. ROSE.

(Endorsed:) Filed May 26, 1879. Ralph L. Goodrich, clerk.

And on June 13, 1879, the following proceedings were had:

On this day came the plaintiffs by U. M. Rose, their solicitor, and

came the defendant, the Little Rock Water Works Company, by McClure and Kimball, his solicitors, and the plaintiffs, by leave of
203 the court, file their supplemental bill herein; and time is given to said water works company to plead to, demur to, or answer said supplemental bill within ten days from this date.

Which supplemental bill is as follows:

Your orators, the said plaintiffs, would respectfully show in this, their supplemental bill of complaint, that the holders of the coupons of the bonds of the defendant, the Little Rock Water Works Company, mentioned in the original bill herein, maturing on the 1st day of January, 1879, they being also the holders of the bonds aforesaid, presented the said coupons to the said water works company, on the 18th day of February, 1879, and demanded payment thereof, and that as more than ninety days have elapsed since said demand and refusal, during which time no part of said coupons has been paid, the whole of the said
204 bonds has become due and payable; and your orators have received from the holders of a majority of the said bonds and coupons a written request to claim the enforcement of the clause in the deed of trust made by the defendant water company to your orators, providing that on such demand and refusal and non-payment the whole of the said bonds should mature.

Wherefore, and in consideration of the premises, your orators pray that a decree may be made for the foreclosure of the lien of the said deed of trust, that the property therein conveyed may be sold under the direction of the court for the payment of the amount due on the said bonds and coupons, and that the proceeds of such sale may be applied accordingly; and that for any part of said amount that may still remain unpaid your orators may have a personal judgment against said company, and that it may be enforced by appropriate process; and that your orators may have such other and further relief as they have
205 already prayed in their original bill; and that the said Little Rock Water Works Company may be required to answer this supplemental bill.

U. M. ROSE, *Sol.*

(Endorsed:) Filed June 13, 1879. Ralph L. Goodrich, clerk.

And on June 24, 1879, the following proceedings were had:

Come the plaintiffs by U. M. Rose, their solicitor, and comes the defendant the Water Works Company, by John McClure, its solicitor, and by consent of parties the answer of said company to the original bill is taken as an answer to the supplemental bill filed herein, and the plaintiffs, by leave of the court, file here their replication to all answers filed herein, and this cause is set down for final hearing at the next term of this court with leave to all parties to take depositions of witnesses
206 generally.

Which replication is as follows:

And the said plaintiffs come, and for replication herein they say that they will maintain their said bill and all amendments and supplements thereto to be true and sufficient in law; and that all the answers thereto by the said defendants or any of them filed thereto are untrue and insufficient in law, when and in such manner as this honorable court may order and direct.

U. M. ROSE,
For Plaintiffs.

(Endorsed:) Filed June 24, 1879. Ralph L. Goodrich, clerk.

206a UNITED STATES OF AMERICA,
Eastern District of Arkansas:

Be it remembered, that, at a circuit court of the United States of America, in and for the eastern district of Arkansas, begun and holden on Monday, the 12th day of April, anno Domini one thousand eight hundred and eighty, at the United States court room, in the city of Little Rock, Arkansas, the honorable Henry C. Caldwell, district judge, presiding and holding said court, the following proceedings were had, to wit, on June 12, 1880:

JOHN G. BARRET & RICHARD B. ALEXANDER
v.
THE LITTLE ROCK WATER WORKS COMPANY.

Now on this day came the said plaintiffs, by U. M. Rose, their solicitor, and dismisses this cause as to the defendant the city of Little Rock, to which the Little Rock Water Works Co. objected, and also came the said defendant by Henderson & Caruth, McClure and Kimball, its solicitors, and this cause having been argued and submitted to the court at a previous term, and the court being now sufficiently advised as to the proper decree to be rendered herein, is of opinion that the plaintiffs are entitled to a final decree for the amount of the unpaid coupons on the bonds issued by the said defendant as set forth in said bill of complaint, beginning with and including the coupons maturing on the first day of January, 1879, and all coupons since matured; it is therefore decreed and considered that the defendant pay to said plaintiffs the amount of said coupons with interest on the same from maturity at the rate of six per cent. per annum until paid, and all the costs of this suit, and because the amount due on said coupons is uncomputed,
206b it is ordered that R. L. Goodrich, esq., the master of this court, take and state an account of the amount thereof, and said master having made said computation returns here into court his report, by which it appears that there is due on said coupons the following amounts, that is to say: On coupons falling due January 1, 1879, the sum of twenty-eight hundred dollars, with interest on the same to July 1, 1880, the further sum of two hundred and fifty-two dollars. On coupons falling due July 1, 1879, the sum of twenty-eight hundred dollars, with interest on the same to July 1, 1880, the further sum of one hundred and sixty-eight dollars. On coupons falling due January 1, 1880, the sum of twenty-eight hundred dollars with interest on the same to July 1, 1880, making the further sum of eighty-four dollars.

It also appearing that the coupons on said bonds falling due July 1, 1880, will very soon mature, it is now ordered that the defendant pay said sums excluding the amount of the said coupons falling due on the first day of July, 1880, if said payment is made before the day last named, into the registry of this court, and that said payment shall include the said coupons falling due on said last named date, if said payment shall not be made before they fall due; and that said payment be made into the registry of this court, and that said payments be made within sixty days from this date; it further appearing that there has been paid out for taxes on the property in his hands by the receiver by the order of the court since the beginning of this suit the sum of twenty-one hundred and twenty-two dollars and fifty cents, including interest up to July 1, 1880, it is ordered that said sum with any further interest that may accrue on said sum be taxed as a part of the costs of this suit, and that it be paid accordingly; it is further ordered that there

206c be paid to C. S. Williams, former receiver herein, the sum of eight hundred and nine dollars and eighty-five cents, balance due him for his services herein, and that there be paid to John W. Rison, the present receiver herein, the sum of six hundred and fifty-eight dollars and thirty-three cents, with the further salary of one hundred and twenty-five dollars per month for any additional time that he may act as such receiver, and that said sums be also taxed as a part of the costs in this suit.

It is further decreed that in case the defendant shall fail to pay said sums as here ordered within the time aforesaid, said property be sold by the commissioner herein appointed to the highest bidder at the front door of the building in which this court is held, at the corner of Main and Fourth streets, in the city of Little Rock, on a credit of three months, bond and approved security being required of the purchaser and a lien being retained on the property sold for the payment of the purchase money, said sale to be made between the hours of nine o'clock in the forenoon and three o'clock in the afternoon, on some day to be fixed by said commissioner, not less than sixty days from this date, due notice of the time, place and terms of such sale having been first given by advertisement in some newspaper published in the city of Little Rock; the said property being described as follows: the water-works of the Little Rock Water Works Company, together with its lands, reservoirs, machinery, pipes, properties, rights, liberties, privileges, and franchises, and all its tools, incomes, rents, issues and profits, held by it on the first day of January, 1878, or acquired by it since that time. It is further decreed that the said purchase money be paid by the purchaser into the registry of this court, and that it be paid out by the clerk, first the costs of this suit, including taxes and compensation to receivers, second to the holders of said cou-

206d pons, matured and maturing up to July 1, 1880, who may present and file the same for cancellation, and the remainder of said purchase money shall remain in the registry, to be applied to the payment of said mortgage debt hereafter to mature in such time and manner as may be hereafter ordered and decreed by the court.

It is further decreed that in payment of any bid at such sale any of said overdue coupons shall be received as cash for a pro rata part proportioned to the amount of said bid and the whole amount of said overdue coupons, after payment of costs; and that Fay Hempstead, esq. be appointed a special commissioner to carry this decree into effect, and that he report his proceedings to this court.

It is also decreed that this cause be reserved for further directions. And the said complainants by their said solicitor and the said defendant the Little Rock Water Works Company by its solicitors each pray an appeal to the Supreme Court of the United States, which appeals are granted by the court.

ON JULY 3, 1880.

207 Now on this day came the plaintiffs by U. M. Rose, their solicitor, and also came the defendant by McClure, Henderson & Caruth, and E. W. Kimball, its solicitors, and the motion filed herein during this term to reform the decree herein rendered at this term of the court on the 12th day of June, 1880, having been argued by counsel and

208 duly considered, the court is of opinion that the said decree is erroneous, and that it should be reformed; and now all and singular the premises being seen and fully considered, it is now by the court ordered, considered, and decreed that the said decree be set aside and annulled in all things, save as to the dismissal of this suit as to the

city of Little Rock; and, in lieu of said decree, it is now by the court ordered, considered, and decreed that the defendant pay into court the sum of seventy thousand dollars, that being the amount of the bonds mentioned in the bill herein, as issued by the defendant, and that said sum bear interest from this day until the first day of January, 1903, at the rate of eight per centum per annum, and from that date until paid at the rate of six per centum per annum until paid; and also the further sum of eleven thousand seven hundred and four dollars, being
209 the amount of overdue coupons attached to said bonds; and that said last named sum bear interest from this date until paid at the rate of six per centum per annum. Also that the taxes paid out on the property hereinafter mentioned by the receiver of this court, amounting to the sum of two thousand one hundred and twenty-two dollars and fifty cents, and the sum due to C. S. Williams, former receiver herein, eight hundred and nine dollars and eighty-five cents, and the amount due to John W. Rison, the present receiver herein, being the sum of six hundred and fifty-eight dollars and thirty-three cents, with the further salary of one hundred and twenty-five dollars per month for any additional time that he may act as such receiver after the first day of July, 1880, be taxed as a part of the costs of this
210 suit; and that the defendant pay all the costs of this suit; and that all the said sums be paid into court on or before the 9th day of August, 1880.

It is further decreed that, in case the defendant shall fail to pay said sum as herein required, or to perform the requirements hereinafter to be made, the property mortgaged by the defendant to secure the payment of said bonds and coupons, that is to say, the water works of the Little Rock Water Works Company, together with its lands, reservoirs, machinery, pipes, properties, rights, liberties, privileges, and franchises, and all its tolls, incomes, rents, issues, and profits, held by it on the first day of January, 1878, or acquired by it since that time, shall be sold by the commissioner herein appointed to the highest bidder, at the front door of the building in which this court is held, at the corner of Main and Fourth streets, in the city of Little Rock, between the hours
211 of nine o'clock in the forenoon and three o'clock in the afternoon on the 10th day of August, 1880, on a credit of three months, bond and approved security being required of the purchaser, and a lien being retained on the property sold for the payment of the purchase money, due notice of the time, place and terms of such sale having been first given by advertisement in some newspaper published in the city of Little Rock, and that the said purchase money be paid into the registry of this court, and that out of the sums be paid, first, the costs of this suit; and, second, to the holders of the said bonds and coupons who may present the same and file them in this court for cancellation, pro rata, as far as the said purchase money may extend, and that if there be a surplus, after making said payments, the same be paid over to the defend-
212 ant, and that the title acquired by said purchase relate back to the first day of January, 1878, the date of said mortgage on said property executed by the defendant to the plaintiffs.

It is further decreed that in payment of any bid at such sale any of said bonds and coupons shall be received as cash, or a pro rata part proportioned to the amount of said bid, and the whole amount of this decree, excepting for costs, taxes, and expenses, which shall be paid only in money. But it is further decreed that if the defendant shall pay into the registry of this court, at any time before said sale, all the amounts

herein decreed for payment of interest, coupons, and sinking fund, together with all the costs of this suit—taxes and expenses—the sale herein ordered shall not take place, and this decree shall stand discharged, without impairing the validity of the said bonds or cou-
213 pons for any amount not paid as aforesaid into the court, this part of this decree being based on an express provision contained in said mortgage.

It is further ordered that Fay Hempstead, esq., be appointed a commissioner to make said sale and to carry this decree into effect.

And this cause is reserved for further directions.

And said defendant excepted to the rulings of the court in making up this decree, and pray here an appeal to the Supreme Court, which is granted.

214 The following depositions were filed and read on the hearing of said cause:

Deposition of U. M. Rose.

On the 18th day of February, 1879, as solicitor for the plaintiffs, I presented to Logan H. Roots, as treasurer of the Little Rock Water-Works Company, he acting then in that capacity, the second coupons of the bonds of the Little Rock Water-Works Company, numbered as follows: Nos. 1, 2, 3, 4, 5, 6, 7, and 63, belonging to the Falls City Tobacco Bank, of Louisville, Ky.; Nos. 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 64, 65, 66, 67, 68, 69, 70, belonging to the Citizens' National Bank of the same city; Nos. 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, belonging to the First National Bank of New Albany, Indiana, each being for $40.00.

215 Payment was not made, and no reason was given for non-payment.

U. M. ROSE.

(Endorsed:) Filed April 13, 1880. Ralph L. Goodrich, clerk, by W. P. Feild, D. C.

Deposition of William Kreiecke, taken October 21, 1879.

Of the sixty-nine bonds of one thousand dollars each of the Little Rock Water-Works Company, of Little Rock, Arkansas, eight bonds were held in December, 1878, and before that time, and have ever since been held by the Falls City Tobacco Bank, of Louisville, Kentucky, a banking corporation organized and existing under the laws of the State of Kentucky. The eight bonds mentioned are numbered one, two, three, four, five, six, seven, and sixty-three. Twenty-four of the same
216 bonds were held at the same time and ever since by Jesse J. Brown, of New Albany, Indiana. These bonds are numbered in regular order from twenty-four to forty-seven, both numbers inclusive. Thirty seven of the same bonds were held in December, 1878, and ever since, and are now held by the Citizens' National Bank of Louisville, Kentucky, a banking institution organized under the laws of the United States, in the State of Kentucky, and doing business at Louisville, Kentucky. These bonds are numbered in regular order from eight to twenty-three, both numbers inclusive, from forty-nine to sixty-two, both numbers inclusive, and from sixty-four to seventy, both numbers inclusive. The second coupons on the foregoing sixty-nine bonds, calling for the

payment of forty dollars each on the first day of January, 1879, were given to me by the Falls City Tobacco Bank, Jesse J. Brown, and the Citizens' National Bank of Louisville, for collection early in February, 1879, and were forwarded by me on the thirteenth day of Febru-
217 ary, 1879, for demand of payment to Uriah M. Rose, a lawyer of Little Rock, Arkansas, and were returned to me by him unpaid. I have them here now, and exhibit them to the commissioner and to the counsel for the defendants.

About the twenty-fifth, or, on reflection, about the twenty-sixth, it was, of May, 1879, the Citizens' National Bank, the Falls City Tobacco Bank, and Jesse J. Brown, caused me to draw up a written notice and request addressed to John G. Barrett and Richard B. Alexander, trustees of the mortgage of the Little Rock Water-Works Company, of Little Rock, Arkansas, which I file herewith as part hereof, marked (A). It was then signed in my presence, in behalf of the Citizens' National Bank, by H. C. Rodes, then and now its cashier, and in behalf of the Falls City Tobacco Bank by B. W. Sherman, then and now its vice-president, and at the time its acting president in the absence of the president. I sent it over on the same day to New Albany, Indiana, for the sig-
218 nature of Mr. Jesse J. Brown, and it was returned to me the same day with his genuine signature attached. I know his signature, having seen him write several times. The next day I presented said paper, in behalf of the signers of it, to the trustees of the mortgage, to whom it is addressed, and they instructed me to cause a bill in equity to be filed in Arkansas to foreclose the mortgage, and to enforce the trust thereby created, and on the 29th day of May, 1879, I forwarded said paper to U. M. Rose, of Little Rock, Arkansas, with instructions to prepare and file the bill in accordance with my instructions.

Under the law of Kentucky promissory notes discounted by incorporated banks of the State, or by national banks organized in this State under the laws of the United States are placed upon the footing of foreign bills of exchange, provided such notes are in terms negotiable and made payable at an incorporated bank in this State, or at a national bank doing business in this State. An agreement to pay an at-
219 torney's fee inserted in such note does not, under the laws of Kentucky, deprive it of its commercial character. I am, and have been for ten years last past a practicing lawyer at Louisville, Kentucky.

Cross-examined by GEO. WM. CARUTH, Esq., counsel for defendants:

I have been acting as attorney for Dennis Long & Co., of Louisville, Kentucky, since 1872, but have not attended to all their law business. I visited Little Rock, Arkansas, in behalf of Dennis Long & Co., in the month of December, 1877; also in the month of June, 1878, and again about the twenty-fifth day of July, 1878. My last visit was for the purpose of collecting the balance of money and bonds then claimed by Dennis Long & Co. to be due to them by the Little Rock Water-Works Company. I think that they then claimed to be due to them five thousand dollars in money and ten thousand dollars in bonds. At that time the defendants refused to pay; they claimed that the money and
220 bonds were not payable, because a certain well had not been constructed, and because the city had not accepted the fire service. The negotiations took about a week, and all sorts of claims were made and abandoned in the course of the negotiations. At no time during their progress did the Little Rock Water-Works Company, or any one for them, contend that the works were insufficient in any respect, nor

different from the provisions of the contract, except in this, that a certain excavation on the river bank adjoining the pump-house of the water-works company, which had been bricked in cistern fashion, was not a well, as it received it' water from the river by means of steam-power; but in that connection it was also admitted by the water-works company, by everybody in the course of the negotiations, among others by honorable John Wassell, its president, and Mr. Townsend, one of its directors, that the location of that excavation for the purpose of
221 supplying from it all water for domestic consumption had been fixed by the water company; that Dennis Long & Co. had made it under instructions of the water company, and that its depth corresponded with the terms of the city ordinance. The only objection raised against it was, that it did not strike a spring, and did not take water by percolation from the river.

On my return I did not inform the trustees of the mortgage of the refusal of the water company to pay any more money or bonds, and did not so inform them until about the tenth day of December, 1878, when the trouble came to a head. I wrote the deed of trust from the water-works company to Barret and Alexander. The terms of it were settled between the water-works company and myself during my visit to Little Rock in December, 1877. Barret and Alexander assumed that trust at the request of Dennis Long & Co. I know that the parties mentioned by me in my direct examination hold the bonds there referred to, because I know when the bonds were put in their possession
222 and that money was raised on them; I have seen those bonds in the possession of those parties, and have so seen them recently; within a week past, as to most of them. I prepared the notice and request, Exhibit A, to the trustees as the attorney of the Citizens' National Bank, the Falls City Tobacco Bank, and Jesse J. Brown. I was not the regular attorney of these parties; I never had any other business for them; John G. Barret is the president of the Citizens' National Bank, and Richard B. Alexander is the cashier of the Falls City Tobacco Bank. George P. C. Rumbough wrote the contract between Dennis Long & Co. and the Little Rock Water Works Company. I was not present when the contract was made. It was made in November, 1877. I prepared a draft of a contract, which Dennis Long took to Little Rock with him. The water-works company did not accept my draft. In the contract as drawn by Mr. Rumbough part of my draft was embodied and part
223 left out. I wrote an amendment of the contract in December, 1877, modifying the terms of payment.

WM. REINICKE.

Deposition of Richard B. Alexander taken October 22nd, 1879.

I am one of the complainants in this case, and am the same Richard B. Alexander who is one of the trustees of the mortgage of the Little Rock Water Works Company. I am cashier of the Falls City Tobacco Bank, of Louisville, Kentucky, and have been such for about ten years last past. The Falls City Tobacco Bank holds eight of the bonds secured by the said mortgage or deed of trust to John G. Barret and myself, as trustees. Those bonds are numbered one, two, three, four, five, six, seven, and sixty-three. That bank first began to hold those bonds on the 28th day of February, 1878—that is, the first seven mentioned;
224 and it began to hold the eighth bond, No. 63, on July 1st, 1878. It has held those bonds ever since those dates, and holds them now. The bank came to hold those bonds by reason of it loaning five

thousand dollars on them to Dennis Long & Co. We loaned that amount of money to them on February 28, 1878. The bonds were delivered to us, I mean the bank, by Dennis Long & Co., as collateral security for that loan. That loan has never been repaid, but there have been renewals of it; but no repayment. Dennis Long & Co. now owe to the Falls City Tobacco Bank five thousand dollars on the collateral pledge of those eight bonds. The first coupons of those bonds, and which were payable July 1st, 1878, were cut off from the bonds by Dennis Long & Co. before maturity. I don't know whether they were paid; but I presume so. I am the active manager of the business of the Falls City Tobacco Bank. Two or three weeks before the second coupons, Jan-
225 uary 1st, 1879, matured, or some time in December, 1878, I think, I don't remember the date, I, and the Falls City Tobacco Bank, first ascertained that it was claimed by the Little Rock Water Works Company that there was some defence against the bonds or against Dennis Long & Co. under their contract for the construction of the defendant's water works.

The second coupons were not paid. I sent them to the correspondent in New York City of my bank, the Merchants' National Bank of New York, for collection.

They were returned to me protested for non-payment. I now file the protest and said coupons as part of my depositions. I afterwards gave those coupons to Mr. Reinicke for collection. I also gave them to him on the 4th day of February, 1879. More than ninety days after the coupons matured, I don't remember the precise date, the bondholders united in a written request to Mr. John G. Barret and myself, as trustees of the mortgage, to take proceedings to enforce the mortgage and
226 collect the bonds. We, that is, Mr. Barret and myself, then instructed Mr. Reinicke to bring suit for that purpose.

Cross-examined by GEO. WM. CARUTH, Esq., counsel for defendants:

The loaning of those five thousand dollars on February 28, 1878, was an original transaction, a new loan to be used outside of the bank, and not a renewal, or to be used in paying anything due to the bank. The paper upon which that loan was made is a bill of exchange, dated Louisville, Ky., Feb'y 28, 1878, drawn by Sam'l A. Miller, in favor of and endorsed by Dennis Long & Co., at Louisville, Ky., and accepted by them. Upon the back of said paper appears the following: "Collaterals accompanying this acceptance are seven (7) 1st mortgage bonds of the Little Rock Water Works Co. of $1,000.00 each, numbers 1 to 7 inclusive, Dennis Long & Co." This endorsement was on the paper when my bank got it and the bonds. That paper was not paid at maturity, but was renewed July 1st, 1878, at four months; again March 7th,
227 1879, at four months; and again July 10, 1879, at four months; with the collaterals of the eight bonds with each renewal. Nothing was ever paid on any of these renewals except the discounts. The bank had no other security, personal or collateral, besides those bonds and the parties to the paper. Dennis Long owns five shares, I think, of the capital stock of the Falls City Tobacco Bank, of the par value of $100.00. That bank has a lien on its stock for debts due to it by its stockholders. Dennis Long is one of the directors of the Falls City Tobacco Bank, and has been for six years. At the time of the execution of the deed of trust to Mr. Barret and myself, the understanding was that the water-works were in the process of erection, but I don't know. I presume so, or otherwise I suppose they would not have issued the bonds or

made the deed. I don't remember whether I ever saw the city ordinance allowing the laying of the mains or not. I presume that I read the deed of trust at the time of its execution. On March 7th, 1879,
228 Dennis Long & Co. were solvent; they were as solvent a concern as there was in Louisville. That was also their condition in July, 1879. I did not require new paper to be made when I heard that defences to the bonds were claimed, because I considered the paper the bank had, with the collaterals, as good as could be made. I requested Mr. Sherman, the vice-president of my bank, to sign the notice and request Exhibit (A) with the foregoing deposition of Wm. Reinecke. It is the expectation of my bank to run this loan of Dennis Long & Co. as long as I see proper; there is no agreement or contract between us as to the length of time. The directors are sworn officers of my bank. My negotiations about the loan were with Samuel A. Miller, who is the financial man of Dennis Long & Co. I never had any conversation with Dennis Long regarding it.

Re examined by counsel for complainants:

I don't know of any meetings of the board of directors of my bank at which I have not been present, I don't think. They would not
229 hold a meeting without me, and never have held one without my presence. Dennis Long never communicated to the board of directors anything about this Little Rock transaction or the loan to him by the bank that I know of. This Little Rock transaction or loan by the bank to Dennis Long & Co. was never mentioned or discussed in the board of directors.

R. B. ALEXANDER.

Deposition of Jesse J. Brown.

I am a resident of New Albany, Indiana, and am president of the First National Bank of New Albany. I hold twenty-four bonds of $1,000.00, secured by the mortgage of the Little Rock Water Works Company to John G. Barret and Richard B. Alexander, trustees. Those bonds are numbered from twenty-four to forty-seven, both numbers inclusive. They were first left with me as president of the First
230 National Bank April 1, 1878, and I have held them continually since that date. We took them as collateral security for a loan to Dennis Long & Co., of Louisville, Kentucky. That loan was made April 1st, 1878, and its amount is seventeen thousand dollars. Those bonds were delivered to me as collateral security to secure that loan of $17,000.00. Seven thousand dollars of the loan have been paid, and there is now due to me on the loan ten thousand dollars, with interest at ten per centum per annum thereon from January 2, 1879. I now hold the whole twenty-four bonds as collateral security for the $10,000.00 and interest. My impression is that the first coupons, due July 1st, 1878, on those bonds were paid. The second coupons, due January 1st, 1879, on those bonds, I sent to the regular correspondent in New York of my bank for collection, and they were returned to me protested for nonpayment. I now produce and file the protest and coupons as part of my deposition. I think I afterward delivered those coupons
231 to William Reinecke for collection. I then united with other holders of the bonds for the foreclosure of the mortgage. I don't remember the date, but it was certainly three months after the default in the payment of the second coupons. My genuine signature appears on the exhibit (A) with the foregoing deposition of Wm. Renicke. I

think it was after the protest of the said coupons, due January 1st, 1879, that I received the first notice that there was trouble between Dennis Long & Co. and the Little Rock Water Works Company, or that it was claimed that there were defences against the bonds. Dennis Long & Co. owe those $10,000.00 to me individually, and I hold those bonds as an individual.

Cross-examined by GEO. WM. CARUTH, Esq., counsel for defendants:

Dennis Long & Co. originally borrowed of the $17,000.00, $10,000.00 from the First National Bank of New Albany and $7,000.00 from me individually. The last renewal of the bank debt was October 4th, 1878.
232 The note to me was renewed on the 2nd of January, 1879, at six months. The loan to Dennis Long & Co. of the $17,000.00 was an original transaction, and they got the money for outside uses; it was not a renewal, or used in paying debts to the bank. They owed the bank nothing when the loan was effected. The payment of $7,000.00 was applied to the bank debt. At the last renewal I paid off the bank debt and took the loan of $10,000.00 as my own. That debt is now covered by the note of Dennis Long & Co. to me for $10,000.00, dated New Albany, Ind., Jan'y 2, 1879, and payable in six months after date, with ten per cent. per annum interest. This note bears the following memorandum endorsed thereon: "This note is secured with collaterals of twenty-four (24) bonds of Little Rock, Ark's, W. W. Co., Nos. 24 to 47 inclusive, of $1,000 each, with coupons attached; $564.70 of said coupons due July 1, 1879, is the property of J. J. Brown, and the remainder, $395.30, is to be delivered to D. Long & Co. July 1, 1879, and on payment
233 of this note." I think that I had the deed of trust to Barret and Alexander in my possession prior to making the loan. I made no inquiry about the bonds before making the loan. I considered Dennis Long & Co. perfectly solvent at the time of the loan and of the renewals, and so consider them now. When the loan was made, Dennis Long & Co. told me that it was uncertain when the water works would be finished, and they made the loan on condition that it was to be renewed if they desired it.

J. J. BROWN.

Deposition of John G. Barret.

I am one of the complainants in this suit, and am the same John G. Barret who is trustee, with Richmond B. Alexander, in the mortgage executed by the Little Rock Water Works Company. I am also the president of the Citizens' National Bank, of Louisville, Kentucky,
234 and have been ever since its establishment in the year 1874. I am the managing officer of that bank, and have been since the institution of the bank. I know Dennis Long & Co., and knew its individual members when it was a firm, and know the corporation thereof since it has been a corporation. The Citizens' National Bank of Louisville, holds thirty-seven bonds, of $1,000.00 each, secured by the mortgage of the Little Rock Water Works Company to Mr. Alexander and myself, as trustees. The numbers of those bonds are from eight to twenty-three, both numbers inclusive; from forty-nine to sixty-two, both numbers inclusive. On the first of July, 1878, the bank received fifteen of those bonds, Nos. eleven, sixteen to twenty-two, both numbers inclusive, and sixty-four to seventy, both numbers inclusive, as collateral to a loan of five thousand dollars to Dennis Long & Co. The loan was made July 1st, 1878, and was an original transaction, the absolute loan

of money, with those bonds as collateral; it was not a renewal. On the fourth day of November, 1878, that note matured, and was re-
235 newed to the 17th of March, 1879, for the same amount with the same collaterals. On the 6th of March, 1879, it was again renewed, for the same amount with the same collaterals, to the 9th day of July, 1879; and on that day it was renewed for four months for the same amount and with the same collaterals. No part of that loan has ever been paid, but the whole amount is owing and not yet due.

On the eleventh of October, 1878, the bank loaned Dennis Long & Co. five thousand dollars, as an original loan, on the collateral security of eight of the before-mentioned bonds, numbered fifty to fifty-seven, both inclusive. That loan matured February 14th, 1879, and was renewed for the same amount and with same collaterals, and fell due June 17, 1879, and was again renewed for the same amount, with the same collaterals, and fell due on October 19, 1879. On the 18th of October, 1879, the note was renewed for the same amount, with the same collaterals, and for four months is now wholly unpaid. On the twenty-first of November, 1878, the bank loaned to Dennis Long & Co. ten
236 thousand dollars, as an original transaction, on the collateral security of fourteen of the said bonds, numbered eight, nine, ten, twelve to fifteen, both inclusive; twenty-three, forty-nine, and from fifty-eight to sixty-two, both inclusive. On the twenty-fourth of March, 1879, the note was renewed for the same amount, with the same collaterals, for four months, which matured on July 26th, 1879, and was at that time renewed for the same amount and with the same collaterals.

This note is wholly unpaid, and is not yet due. The first coupons, due on July 1st, 1879, were not on the bonds when they were pledged with the bank, and I suppose that they were paid, but I don't know. If I had not supposed that they had been paid, I should never have taken the bonds as collateral. My impression is—I know that a short time before the second coupons were due, probably in December, 1878, I and my bank first got notice that the Little Rock Water Works Company claimed that they had some defence against the bonds, or against
237 Dennis Long & Co., under their construction contract. I know that it was after the bank made the last loan to Dennis Long & Co., otherwise I should not have made the loan on the pledge of those bonds. The second coupons were not paid. At maturity I sent the second coupons to New York for collection, but they were returned to me unpaid; and afterwards, on the 13th of February, 1879, I delivered those coupons to Mr. Reinicke, for collection, and took his receipt for them. I now file the said coupons as part of my deposition. The Citizens' National Bank, the Falls City Tobacco Bank, and J. J. Brown, of New Albany, Indiana, some time in the spring of 1879—I think in May of that year—served upon Mr. Alexander and myself, as trustees in the mortgage, the Exhibit (A), with foregoing deposition of Wm. Renicke, and thereupon we instructed Wm. Renicke to bring suit to enforce the mortgage and collect the bonds. All the notes which I have named as made by Dennis Long & Co. to the Citizens' National Bank were made
238 on blanks, of which I know file the form, marked J. G. B., No. 1, and were appropriately signed and filled up both on the face and back, setting forth the collaterals.

There are other general contracts between Dennis, Long & Co. and my bank in respect to discounted paper. They were made at the respective times they bear date, and are four in number. I know exhibit the originals to the counsel for the defendant, and file and make part of my deposition copies thereof, made and certified by the commissioner,

marked J. G. B. No. 2, J. G. B. No. 3, J. G. B. No. 4, and J. G. B. No. 5. The Citizens' National Bank holds those thirty-seven bonds not only for the debts for which they were specially pledged, but also for any and all indebtedness from Dennis Long & Co. to the bank. Besides the debts which I have specified, the bank now holds discounted bills and notes and overdrafts against Dennis Long & Co. amounting to about forty thousand dollars. All of this indebtedness of
239 about $40,000.00 was contracted since January 1st, 1879.

Cross-examined by GEORGE WILLIAM CARUTH, Esquire, counsel for defendants.

Prior to the loan in July, 1878, I let Dennis Long & Co. have money on drafts on the Little Rock Water Works Company. Such drafts have all been paid. I heard about July, 1878, that there was a balance claimed to be due from that company to Dennis Long & Co. on their contract with it, as I understand that there still is claimed to be a balance due them thereon. I heard that Dennis Long & Co. and the company had not come to a final settlement. I heard, I suppose about the time of the July, 1878, transaction, or maybe before, in the course of the talks about the Little Rock Water Works Company, that there was an unsettled account between Dennis Long & Co. and the water works company, and from that time I heard this all along. I have heard that they, the water works company, have refused to settle up to this
240 time, but the reason for their refusal I never heard and don't know. I have other general collaterals of Dennis Long & Co. to secure all their indebtedness to the bank. Among others the bank holds 125 shares of stock in the Henderson Packet Company, of the par value of $12,500.00, but worth not over fifty cents on the dollar, and also shares of stock in the Gas Company, of the par value of $ each, worth about $. I find I am mistaken. These blanks are not to be filled, as I hold no such stock as collateral, as I supposed.

There is no personal security on the notes for the loans for which these bonds were specially pledged, except the security of Dennis Long & Co. I think and consider that the paper for the indebtedness of about $40,000.00, outside of these loans, is abundantly secured without respect to these bonds of the water company. I regard that Dennis Long & Co. are now solvent, and were solvent in January, 1879.
241 At the time I executed the deed of trust I read it. The Citizens' National Bank has not furnished any money to defray the expenses of that suit, and no money has been furnished to Mr. Alexander and myself, as trustees, for that purpose. In January, 1879, my attention was attracted to newspaper articles on the subject of the trouble between Dennis Long & Co. and the water works company, and I heard of it some time before, but I cannot tell when.

Re-examined by counsel for complainants:

I heard of it after the last loan of $10,000.00 to Dennis Long & Co. The overdrafts of Dennis Long & Co. are not secured except by the bonds and the other general collaterals held by the bank mentioned by me.

J. G. BARRET.

242 The following are exhibits to foregoing depositions:

Exhibit A to Wm. Renicke deposition.

To JOHN G. BARRET AND RICHARD B. ALEXANDER,
Trustees of the mortgage of the Little Rock Water Works Company of Little Rock, Arkansas:

The undersigned, who are the holders of more than a majority of the outstanding first mortgage bonds of the Little Rock Water Works Company, of Little Rock, Arkansas, hereby notify you that the said Little Rock Water Works Company has defaulted on all the second coupons of the said bonds due January 1, 1879, and has failed for the space of ninety days to pay the semi-annual interest due on the said bonds January 1, 1879, as and when the same became due, after presentation and demand of the payment of the said coupons, by reason of which
243 failure all of the said bonds have become due and payable; wherefore the said mortgage lien may be enforced for the whole debt, and the undersigned hereby request you to have all the mortgaged property and franchises sold and conveyed by the decree or judgment of a court having jurisdiction.

CITIZEN'S NATIONAL BANK OF LOUISVILLE,
By H. C. RODES, *Cas.*
FALLS CITY TOBACCO BANK,
By B. W. SHERMAN, *Vice-President.*
J. J. BROWN, *New Albany, Ind.*

Protest.

UNITED STATES OF AMERICA,
State of New York, ss:

On the 2nd day of January, in the year of our Lord one thousand eight hundred and seventy-nine, at the request of the Merchants' National Bank of the city of New York, I, Theodore Hinsdale, notary public, duly commissioned and sworn, dwelling in the State of New York, did present the original eight coupons hereto annexed for
244 $40 each, of the Little Rock Water Works Company and numbered respectively 1, 2, 3, 4, 5, 6, 7, and 63, to the coupon teller of the Bank of America in the city of New York, at its banking house in the city of New York, and demanded payment thereof, which was refused.

Whereupon, I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the maker and endorser of the said coupons as against all others whom it doth or may concern, for exchange, re-exchange, and all costs, damages, and interest already incurred for want of payment of the said coupons.

This done and protested in the city of New York, aforesaid.

[SEAL.] THEODORE HINSDALE,
Notary Public.

In the U. S. cir. ct. U. S. eastern dist. Arkansas.

JOHN G. BARRET ET AL.
vs.
LITTLE ROCK WATER WORKS CO. ET AL.

Protest and eight coupons Nos. 1, 2, 3, 4, 5, 6, 7, and 63 exhibited with the annexed deposition of Richard B. Alexander, taken by
245 me for complainants in the above entitled suit at Louisville, Ky., this 22nd day of October, A. D. 1879.

JAMES A. BEATTIE,
Com'r Cir. Ct. U. S. Dist. Ky.

No. 1.] *Copy of coupon.* [$40.

The Little Rock Water Works Company will pay to bearer forty dollars on the first day of Jan'y, 1879, on presentation of this coupon at the Bank of America in the city of New York, for semi-annual interest on first mortgage bond.

GEO. P. C. RUMBOUGH, *Sec'y.*

They are seven other coupons of like character and amount.

Protest.

UNITED STATES OF AMERICA,
State of New York, ss:

On the second and fourth days of January, in the year of our Lord one thousand eight hundred and seventy-nine, at the request of
246 the Fourth National Bank of the city of New York, I, the subscriber, a notary public duly commissioned and sworn, dwelling in the city of New York, did present the twenty-four original promissory notes or coupons hereunto annexed to a teller in charge at the Bank of America in the city of New York (being the place where the said coupons or promissory notes are payable), and demanded payment thereof which was refused. "No funds." "Know nothing about them."

Whereupon I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the makers of said coupons or promissory notes as against all others whom it doth or may concern for exchange, re-exchange, and all costs, damages, and interest already incurred and to be hereafter incurred for want of payment of said promissory notes or coupons.

In testimony whereof I have hereunto set my hand and affixed my seal at the city of New York aforesaid.

[SEAL.]

B. A. PIPER,
Notary Public.

247 In the cir. c't U. S., east. dist. Arkansas.

JOHN G. BARRET ET AL.
vs.
LITTLE ROCK WATER WORKS CO. ET AL.

Protest and twenty-four coupons Nos. 24 to 47, both inclusive, exhibited with the annexed deposition of Jesse J. Brown, taken by me for

complainants in the above-entitled suit at Louisville, Ky., this 22nd day of October, A. D. 1879.

JAMES A. BEATTIE,
Com'r Cir. C't U. S. Dist. Ky.

No. 24.] *Copy of coupon.* [$40.00

The Little Rock Water Works Co. will pay to the bearer forty dollars on the first day of Jan'y, 1879, on presentation of this coupon at the Bank of America, in the city of New York, for semi-annual interest on first mortgage bonds.

GEO. P. C. RUNBOUGH, *Sec'y.*

There are twenty-three other coupons of like character and amount.

248 Also thirty-seven other coupons of like character and amount.

In the cir. c't U. S., E. dist. Arkansas.

JOHN G. BARRET ET AL.
vs.
LITTLE ROCK WATER WORKS CO. ET AL.

Thirty-seven coupons Nos. 8 to 23, both inclusive, Nos. 49 to 62, both inclusive, and Nos. 64 to 70, both inclusive, exhibited with the annexed deposition of John G. Barret, taken by me for the complainants in the above-entitled suit at Louisville, Ky., this 22nd day of October, A. D. 1879.

JAMES A. BEATTIE,
Com'r Cir. C't U. S., Dist. Ky.

Exhibit No. 1 to deposition of J. G. Barret.

8 .] LOUISVILLE, KY., , 187 .

after date, for value received, promise to pay to the order of $\frac{}{100}$ dollars, negotiable & payable at the Citizens' National Bank of Louisville.

No. .

It is agreed by the parties hereto that this note shall bear interest after maturity at the rate of eight per cent. per annum until paid.

249 J. G. B., No. 1.

In the U. S. cir. c't, dist. Ky.

JOHN G. BARRET
vs.
LITTLE ROCK WATER WORKS CO. ET AL.

Exhibit J. G. B., No. 1, with the annexed deposition of John G. Barret, taken by me for complainants in the above-entitled suit, at Louisville, Ky., this 22nd day of October, 1879.

JAMES A. BEATTIE,
Com'r Cir. C't U. S., Dist. Ky.

Exhibit No. 2.

(Copy.)

LOUISVILLE, KY., 23*r Feb'y*, 1877.

In all cases in which we sell bills to the Citizens' Nat'l Bank and they are not accepted, or where they are accepted, or where we sell notes to said bank, in all such cases or in any such case, we hereby assign to said bank the full indebtedness of said parties upon whom we draw or discount notes on the said bank, as fully as if special transfer
250 and assignment was made in each individual case.

DENNIS LONG & CO.

Witness:
WM. SHORT.
J. W. SCHUERER.

A copy. Attest:

JAMES A. BEATTIE,
Com'r U. S. Cir. C't, Dist. Ky.

250 *Exhibit No. 3.*

(Copy.)

LOUISVILLE, *Jan'y* 5, 1878.

In consideration of the Citizens' Nat'l Bank of Louisville having discounted our drafts and furnished us money thereon—of us on the Little Rock Water Works Company, we hereby assign and transfer to said bank all money that may be due or coming to us on our contract with said company.

DENNIS LONG & CO.

A copy. Attest:

JAMES A. BEATTIE,
Com'r U. S. C't C't, Dist. Ky.

251 *Exhibit No. 4.*

(Copy.)

LOUISVILLE, KY., 7 *March*, 1878.

It is hereby understood and agreed between us and the Citizens Nat'l Bank that in all instances and in every case where said bank has or hereafter may take any of our drafts or other paper on parties, persons, or corporations, or discount the same, or receive the same as collateral, we hereby assign and transfer the same to said bank, and all right and title we have and may have in the same, or any property in the hands of the party drawn on.

DENNIS LONG & CO.,
By SAM'L A. MILLER,
Vice-Pres.

Witness:
H. C. RHODES.

A copy. Attest:

JAMES A. BEATTIE,
Com'r Cir. C't, U. S. Dist. Ky.

252 *Exhibit No. 5.*

(Copy.)

LOUISVILLE, KY., *Aug.* 12, 1878.

We assign and transfer to the Citizens' National Bank of Louisville, Ky., as collateral security on all liabilities of Dennis Long & Co. now existing or hereafter created, contingent or fixed to the said bank, all of our interest in the following described first mortgage bonds of the Little Rock Water Works Co., of Little Rock, Arks., for $1,000 each, viz, Nos. 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, and 47, in all $24,000, and now hypothecated with the First National Bank of New Albany, Indiana, for $17,000.

DENNIS LONG & CO.

Witness:
ROBERT HUGHES.

A copy. Attest:

JAMES A. BEATTIE,
Com'r U. S. Cir. Ct, Dist. Ky.

253 UNITED STATES OF AMERICA,
Eastern District of Arkansas:

I, Ralph L. Goodrich, clerk of the circuit court of the United States for the eastern district of Arkansas, in the eighth circuit, hereby certify that the foregoing writings annexed to this certificate are true, correct, and compared copies of the original remaining of record in my office.

In witness whereof I have hereunto set my hand and the seal of said court this 2d day of August, in the year of our Lord one thousand eight hundred and eighty, and of the Independence of the United States of America the one hundred and fifth.

Attest:
[SEAL.] RALPH L. GOODRICH, *Clerk.*

(Indorsement on cover:) No. 1099. The Little Rock Water Works Company, appellant, vs. John G. Barret and Richard B. Alexander. E. Arkansas C. C. U. S. Filed 11th November, 1880.

FILED
JAN 7 1881

IN THE

Supreme Court of the United States

LITTLE ROCK WATER WORKS COMPANY,

Appellant.

vs.

JOHN G. BARRET AND RICHARD B. ALEXANDER,

Appellees.

Appeal from the Circuit Court of the United States for the Eastern District of Arkansas.

APPELLANTS BRIEF.

Little Rock:

PRINTED BY DEAN ADAMS, PROPRIETOR "GAZETTE" BOOK AND JOB PRINTING HOUSE.

1880.

IN THE

Supreme Court of the United States

LITTLE ROCK WATER WORKS COMPANY,

Appellant.

vs.

JOHN G. BARRET AND RICHARD B. ALEXANDER,

Appellees.

Appeal from the Circuit Court of the United States for the Eastern District of Arkansas.

BRIEF FOR APPELLANTS.

The appellant is a corporation organized to furnish the City of Little Rock and the inhabitants thereof with water. Having so organized, it made a contract with the City of Little Rock—known as Ordinance No. 11 (R., p. 24.)

Under that ordinance it secured the privilege of laying water mains and pipes in and under the streets, alleys, and public places, upon certain conditions therein named, and upon those conditions being complied with, the City agreed to pay the appellant $85 per annum for ten years on seventy-five hydrants, and $75 on each of said hydrants after ten years.

The ordinance prescribed with great particularity how said works were to be built, and they were to be finished within ten months.

Appellant made a contract with Dennis Long & Co. to erect said works (R., p. 32.)

Ordinance No. 11 was made a part of that contract (R., bottom p. 33.)

Bonds were issued to the contractors and a deed of trust executed to secure them (R., pp. 7, 8, 9, 10, 11.)

The City refused to receive the works. (See appellee's amended bill, R. 47 and 48.)

The appellant never was in posession of or received the works—because they were never completed according to contract, but the same remained in the possession of Dennis Long & Co., or of their agent, one Townsend, and they paid all the expenses of running them. (See Townsend's affidavit, R. 42, filed by appallees.

On the 26th of November, 1878, appellant instituted an action for damages against Dennis Long & Co. in the Pulaski Circuit Court, and they being non-residents, sued out an attachment. (B., p. 13.)

In pursuance of said attachment, the Sheriff levied upon the Water Works and all its appurtenances and took the same into possession. (R. 42.)

Pending this suit, the appellees, as trustees for the bondholders, filed their bill in a State Court in chancery to foreclose the deed of trust to recover the principal and interest of all the bonds secured by the deed, amounting to Seventy Thousand Dollars.

This suit was removed to the United States Circuit Court, where all subsequent proceedings were had.

That court appointed a receiver, and directed him to take possession of the works (R. 153), and subsequently made two decrees, from the last of which the Water Works Company appealed.

Our contention is:

FIRST—That the property being in possession of the Sheriff, pending a litigation in a State court, the Federal tribunal could not deprive him of such possession.

SECOND—That the court erred in giving a decree for the principal of the bonds secured by the deed of trust.

I

The Court Erred in the Appointment of a Receiver.

The evidence discloses the fact that at the time the court below ordered the property into the hands of its receiver, it was in the custody of the Sheriff under a writ of attachment, issued by the State Court. It was therefore to be considered as within the custody of that court, and under its control. It is respectfully urged that, such being the case, no other court, unless it be one having some supervisory control, can under any possible contingency, in any wise interfere with it. Certainly, it cannot be contended that the Circuit Court of the United States for the Eastern District of Arkansas had any supervisory control or any superior jurisdiction over the Pulaski Circuit Court. That court had unquestioned jurisdiction over the subject matter. In pursuance of that jurisdiction, it issued its lawful process, commanding its Sheriff to levy upon the property of the defendants, Dennis Long & Co., which he did, as shown *supra*. Pending that litigation, and whilst the property was held by the Sheriff, the court below, deriving its authority from another sovereignty, appointed a receiver and directed him to take possession.

Suppose at the end of the litigation in the Pulaski Circuit Court, judgment should be given for the Little Rock Water Works Company, sustaining the attachment, and ordering the property, levied on to be sold (being the identical property sold by decree of the court below), how could it be enforced? It may be argued that it would be his duty to sell it regardless of

decretal sale of the United States Circuit Court, but under such circumstances who would buy? The sale would be idle and a mere mockery. Be that as it may, the question recurs: Could the possession of the State Court be disturbed? We submit that it could not, and that this court has so held.

Hogan vs. Lucas, 10 Peters, 500.
Taylor vs. Caryl, 20 Howard, 583.
Buck vs. Colbath, 3 Wallace, 335.

II

The Court Erred in Rendering a Decree for the Principal of the Bonds.

These bonds were dated January the first, 1878, payable twenty-five years after date.

On the first day of January, 1879, the appellees filed their bill in chancery, seeking collection of the entire amount of the bonded debt secured by the deed of trust.

Your Honors will search in vain through the bill, two amended bills and supplemental bill, to find any reason why the appellees should have a decree for the payment of bonds which will not be due for many years.

The pleadings simply set out the fact that the appellees, as trustees, have been requested by a majority of the holders of the bonds, to file this bill of foreclosure; that the bonds would be due twenty-five years after the first day of January, 1878, and pray for a decree for their payment. Surely, an obligation payable by its terms in the year nineteen hundred, may not presently be sued on, unless there is some special provision or covenant making it payable before that time.

If there is such a covenant must not the pleader set it out, so that the court may know that although upon the face of the obligation sued on, it is not due, yet the covenant gives him the present right to bring his suit.

In the deed of trust there is this clause:

"It is further agreed that in the event that the said party of "the first part shall fail for the space of ninety days to pay the "semi-annual interest due on said bonds as and when the same "may become due, or any of the said annual instalments of the "sinking fund, as and when the same may become due, *provided* "*that such failure is not caused by the said city of Little Rock* "*under the contract aforesaid*, after the presentation and demand "of the payment of said coupons, or after the demand of any of "the instalments of the sinking fund, then, and in that event "all of said bonds shall become due and payable, and the lien "hereby created may be enforced for the whole debt, and the "parties of the second part and their successors shall, on the "written request of the holders of a majority of said bonds then "outstanding, take possession of the property and franchises "herein conveyed, or covenanted to be, and by themselves and "agents, or by a receiver of a court appointed in an action of "foreclosure, or an action for this special purpose, hold, use "and operate the same for the joint and equal benefit of the "holders of all of said bonds, and receive the toll, rents, in-"comes, issues and profits thereof; or said trustees may in "such case by the judgment or decree of a court having juris-"diction, have all said mortgaged property and franchises sold "and conveyed." (Rec. 12).

Our contention was and is, that before appellees could insist upon the collection of the principal of these bonds, their bill must exhibit to the court the fact, that the failure of appellants to pay the semi-annual interest, was "*not caused by the said city of Little Rock under the contract aforesaid*," because upon that fact and that alone depended their right to sue for the principal. If this was not so, why put it in the deed of trust at all? It certainly was put there to answer some useful purpose, and there must have been some good reason for inserting it. Let us see what that reason was. We have only to turn to the supplemen-

tal bill to ascertain it. Appellees' solicitor alleges as follows:

"The city is the largest consumer of water supplied by said "works, and the money accruing to the company under said "ordinance, if faithfully carried out, would exceed in amount all "its other incomes."

Now, it was for that very reason the proviso was inserted. Both the company and the trustees knew perfectly well that without the payments of the city it would be almost impossible to pay the interest on the bonds.

It is interesting to observe the connection between the trustees and holders of the bonds.

The bonds are mainly held by the Citizens National Bank, of Louisville, and the Falls City Tobacco Bank. (See depositions of Barret and Alexander R., pp. 68 and 71.) John G. Barret one of the trustees is the President of the Citizens National Bank, and R. B. Alexander, the other trustee, viz. the Cashier of the Falls City Tobacco Bank. (See dep. *supra*.)

So that in point of fact the trustees and holders of the bonds well knew the contingency upon which their right to foreclose the principal depended and the reason therefor. Yet the pleader is as silent as the grave in all of his bills, touching this proviso, and contents himself with simply asking for judgment on an obligation, not due until the year nineteen hundred without giving any reason therefor.

We submit that this is not in accordance with the principle of pleading. *The Court below in its first decree so held, and refused to give a decree for the principal of the bonds.* (R. p. 63.)

Subsequently he revised it and gave judgment for the entire amount, from which decree this appeal is prosecuted.

Authorities upon the proposition above presentd would seem

to be superfluous, yet we take the liberty to call attention to the following:

Dodge vs. Coddington, 3 Johns 146.
Adams vs. Mayoy, of N. Y., 4 Duew 295.
Atkinson vs. Collins, 30 Barb. 430.
Brown vs. Colie, 1 E. D. Smith 265.
Middleton vs. Ballingal, 1 Cal. 446.
Russell vs. Nicholl, 3 Wend 112.
Shields vs. Pettie, 4 N. Y. 112.
Benedict vs Field, 16 N. Y. 595.

It may be suggested that the above are common law authorities, and that the rules of pleading in courts of equity are not so strict. Be that as it may, one thing is very certain, and that is, that a bill in Chancery as well as a declaration at law must *state a case* which appeller's bill did not.

The writers upon chancery pleading, however, advise that equity pleadings adhere as closely as possible to the general rules laid down in the books which treat of common law pleadings, wherever such rules are applicable to the case presented. They were so applicable here.

The answer of appellants sets up the fact that the failure to pay the coupons was the result of the failure of the city of Little Rock, and the pleadings of appellee show conclusively that such was the fact. Hence it was that appellees could not truthfully assert in their bill, that which was absolutely essential to enable them to maintain their action for the principal of the bonds.

We submit that the first decree of the court below was right, and the last error.

Respectfully submitted,

W. F. HENDERSON.

HENDERSON & CARUTH, of Counsel.

A. H. Garland
of Counsel,

SUPREME COURT U.S.
FILED
DEC 27 1880
JAMES H. MCKENNEY, CLERK

IN THE

SUPREME COURT

OF THE

UNITED STATES.

LITTLE ROCK WATER WORKS COMPANY, *Appellant*,

vs.

JOHN G. BARRETT and RICHARD B. ALEXANDER, *Appellees*.

Appeal from the Circuit Court of the United States for the Eastern District of Arkansas.

BRIEF FOR APPELLEES.

PRINTED BY JAMES MITCHELL, STATE PRINTER, LITTLE ROCK, ARK.

IN THE

SUPREME COURT

OF THE

UNITED STATES.

LITTLE ROCK WATER WORKS COMPANY,
APPELLANT,

vs.

JOHN G. BARRETT and RICHARD B. ALEXANDER, APPELLEES.

Appeal from the Circuit Court of the United States for the Eastern District of Arkansas.

BRIEF FOR APPELLEES.

The suit was brought in a State Court, in Chancery, by the appellees, and was afterwards transferred to the United States Circuit Court. The suit was by Barret and Alexander against the Little Rock Water Works Company and the firm of Dennis Long & Co. But as to the latter the suit was afterwards dismissed. The bill charged that on the 1st day of January, 1878, the Water Company conveyed to the plaintiffs their Water

Works and other property, to be held by them as Trustees for the purpose of securing the payment of certain bonds and coupons issued by it, the principal of the bonds amounting to eighty thousand dollars, payable twenty-five years after date, with coupons for interest payable semi-annually, at the bank of North America, New York. For the rest the material parts of the conveyance were to the effect that the company should have possession until default; should pay interest and principal as agreed, and should provide a sinking fund for the retirement of the bonds, of twelve hundred dollars a year, appointing a commissioner of the sinking fund, who was to receive all moneys coming to the company from the city of Little Rock, under a contract made by it with the company, during the whole period of twenty-five years, for the increase of the sinking fund.

Then came this clause, which involved the principal matter of dispute: "It is further agreed that in the event that the said party of the first part shall fail for the space of ninety days to pay the semi-annual interest due on said bonds as and when the same may become due, or any of the said annual instalments of the sinking fund, as and when the same may become due, *provided that such failure is not caused by the said city of Littte Rock under the contract aforesaid*, after the presentation and demand of the payment of said coupons, or after the demand of any of the installments of the sinking fund, then, and in that event all of said bonds shall become due and payable, and the lien hereby created may be enforced for the whole debt, and the parties of the second part and their successors shall, on the written request of the holders of a majority of said bonds then outstanding, take possession of the property and franchises herein conveyed, or covenanted to be, and by themselves and agents, or by a receiver of a court appointed in an action of foreclosure, or an action for this special purpose, hold, use, and operate the same for the joint and equal benefit of the holders of all of said bonds, and receive the toll, rents, incomes, issues and profits thereof; or said trustees may in such

case by the judgment or decree of a court having jurisdiction, have all said mortgaged property and franchises sold and conveyed." *Rec. 12.*

The bill then proceeded to show that the company had sued Dennis Long & Co., who had contracted with it for the building of the Water Works, in a State Court, and had attached the property of the company, claiming in that suit that Dennis Long & Co. had failed to comply with their contract to build the works, and that the company had been damaged in the sum of one hundred thousand dollars thereby, that the property was in the hands of the sheriff under the attachment; that it was not paying expenses, and was being neglected; and that it was necessary to appoint a receiver to take charge of the property until the end of the litigation. Plaintiffs prayed for the appointment of a receiver, that an account might be taken of the amount due on the bonds and coupons at the hearing, and that in default of payment the equity of redemption might be sold; and for general relief.

The company filed a "response," whatever that may be, by which it argued that no receiver should be appointed. *Rec. 52.* It is of no consequence on this appeal.

The company filed a motion to remove to the Federal Court, which was granted. *Rec. 140.*

Plaintiffs amended the bill by showing that taxes were due on the property, and that they were unpaid, and that there were no means to pay them with. *Rec. 147.* They also filed a second amendment, which is unimportant on this appeal. *Rec. 150.*

The court appointed a receiver, and the property being in the hands of the sheriff under the attachment of the company, over which it had unlimited control, the court ordered it to be placed in the hands of the receiver. *Rec. 153.*

The company answered, making its answer a cross-bill against the city; but as nothing came of this cross-bill, no further attention need be given to that feature of the case.

The defences set up in the answer, though drowned in a sea of words, may be briefly set forth.

The answer set up the charter of the city, to show that it was authorized to contract for building water works; that the city made a contract with the company for the building of the works, dated on the 23d of November, 1877; that the company then made a contract with Dennis Long & Co., to build the works according to the requirements of its contract with the city, the works to be completed by the first day of October, 1878. That at the time that the deed of trust was made the company had no works, but only a lot in the city; that the pipes, machinery, etc., were then only *in posse*; and that neither the company nor the city had ever accepted the pipes and other works as put up by Dennis Long & Co. The argument seemed to be that the property belonged to Dennis Long & Co. If that was so, the answer could only be regarded as a disclaimer. The answer then sets forth a great many objections to the manner in which the works were built by Dennis Long & Co., on account of which the works had not been accepted either by the city or by the company. Then it alleged, as the piece of resistance, that the city had "refused and made default in making the payments which it had contracted to do;" and "that by reason of the default of said city of Little Rock, as aforesaid, the complainants are estopped from maintaining this suit, until such time as it is made to appear that the payment of the semi-annual instalments of interest did not arise from the default of the City of Little Rock, to comply with the provisions of the ordinance of November 23d, 1877, in regard to paying for the use of hydrants." *Rec. 171.* The answer also asserted that the lands belonged to Dennis Long & Co., and that the suit was prosecuted for their benefit. The plaintiffs filed an amendment to the bill, making certain charges against the city; *Rec. 191.* But as nothing came of it, it may be passed without further notice.

Plaintiffs filed a supplemental bill, setting forth that the coupons maturing Jauuary 1, 1879, had been presented for

payment more than ninety days before the filing of the supplement, during which time no part of them had been paid; whereby the whole of the bonds and coupons had become due and payable; and that a majority of the holders of the bonds and coupons had made a written request of the plaintiffs for the enforcement of the clause in the deed of trust relating to such a default. Prayer for decree and foreclosure against the company. *Rec. 203.*

The company, by consent, made its answer to the original bill an answer to this supplement. *Rec. 205.*

Replication was filed, and the cause was set down for hearing June 24, 1879. *Rec. 206.*

The cause was heard June 12, 1880. The court at first decreed for the plaintiffs for the amount of the overdue interest and instalments of the sinking fund; but on re-argument the court gave a decree for the whole of the bonds, principal and interest. *Rec. 208.*

The company appealed.

By the evidence it appeared that demand had been made for the payment of the coupons, and that a majority of the holders of the bonds had requested the plaintiffs to enforce the collection of all of the bonds and coupons.

The company took depositions for the purpose of proving that the holders of the bonds were not innocent holders. It appeared from this evidence that the holders had received the bonds as collateral security for the payment of large sums advanced to Dennis Long & Co. by them.

Some questions might arise as to the rights of such holders, if there had been any proof of any failure of consideration as to the bonds in suit; but there was none. The allegations as to the defalcations of Dennis Long & Co., made with so much detail in the answer remained unsupported by a word of testimony; so that the original payees in the bonds, who were the plaintiffs, or Dennis Long & Co., might have recovered on

them. Hence, no question as to legal discrimination between innocent holders and others was apparent in the cause.

The only thing left for discussion then is the clause in the deed of trust above quoted literally.

Let us see how that matter stands.

The contract of the company with the city is dated November 23, 1877. *Rec. 80.* It was in the form of an ordinance. The contract of the Water Company with Dennis Long & Co., is dated on the day following: and by that contract Dennis Long & Co. agreed to construct the works in accordance with the contract of the company with the city, which was made a part of their contract. *Rec. 109.*

The answer says that the coupons and sinking fund were not paid because of the default of the city; but in the same breath it asserts that the default was on the part of Dennis Long & Co.. who failed to complete the work within the time and in the manner required by their contract. If this was the case the city was not in default at all. But the Water Company was, on this showing, in default itself; for it was responsible for the defaults of Dennis Long & Co., with whom the city had no contract. It was no excuse for the company to say that its contractors had not complied with their agreement. If that were true, it would be the duty of the company to get some one else to do the work, so as to keep its own contract with the city. The Water Company was simply trying to take advantage of its own wrong, by admitting that it had not complied with its contract with the city, and thus throwing the city in default, without showing wherein the city had departed from its agreement. The language of the deed was "provided that such failure is not caused by the city of Little Rock, under the contract aforesaid." *Rec. 33.* There was no failure of the city under the contract, unless it had broken some of its provisions; and the answer takes great pains to show that the work was not done according to the contract, and that the city had never accepted it, as it was under no obligation to accept it.

The most that can be said for the defence thus asserted is that it evinces a strange confusion of ideas. In the end the Water Company bases its defence on its own violation of its contract with the city; for it was the company that agreed with the city that the work should be done, and the city had nothing to do with Dennis Long & Co., and consequently was in no way answerable for their defaults. Any citation of authorities would be superfluous.

Respectfully,

U. M. ROSE.